

ZB# 05-01

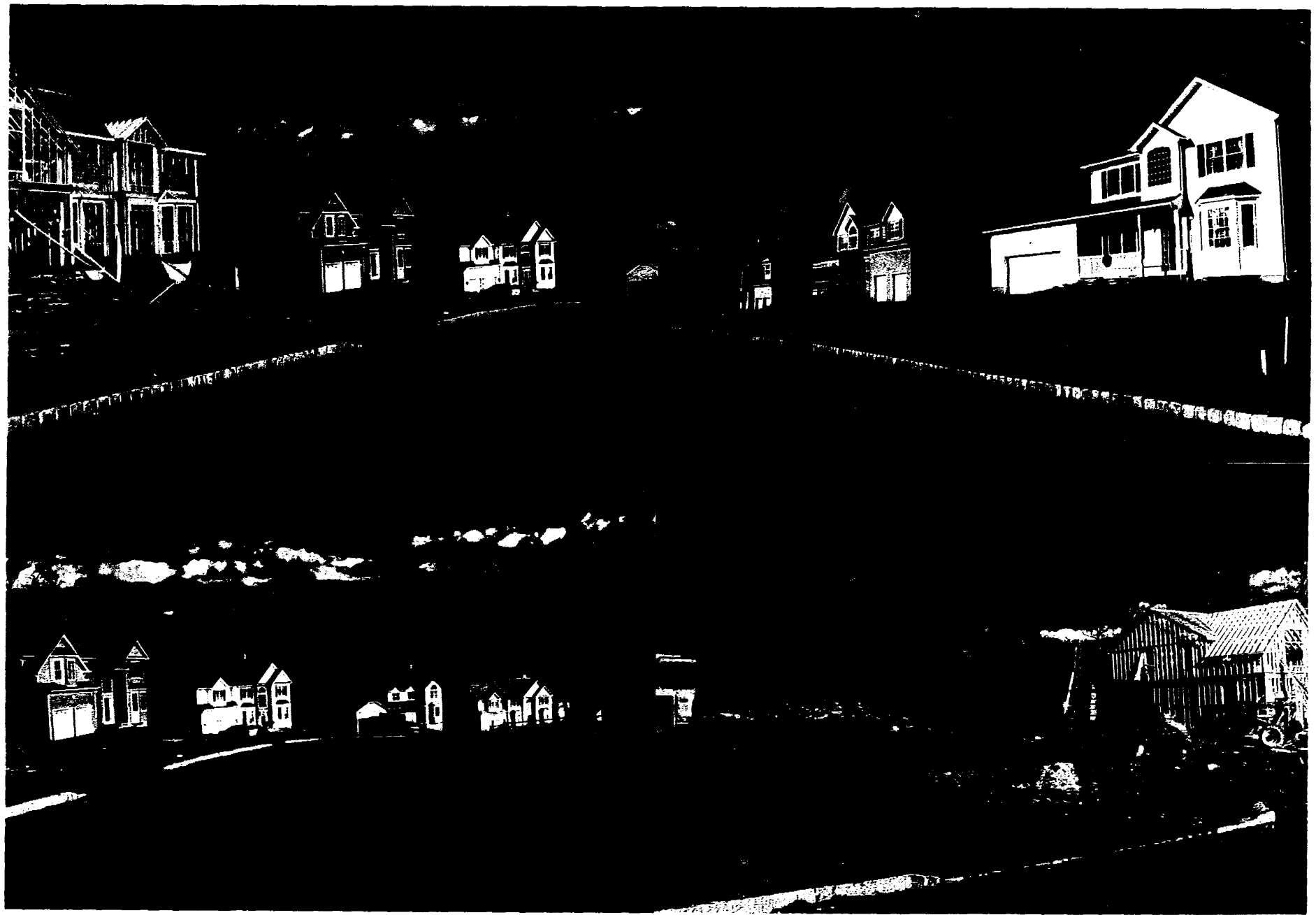
Applied Builders

89-2-8

TOWN OF NEW WINDSOR
~~zoning PLANNING BOARD~~
APPROVED COPY

DATE: 3-14-05

ZBA #05-01 APPLIED BLDGS. (AREA) —
1039 ROLLING RIDGE (89-2-8)



**OFFICE OF THE BUILDING INSPECTOR
TOWN OF NEW WINDSOR
ORANGE COUNTY, NEW YORK**

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

DATE: 11/9/04

APPLICANT: Applied Building Dev. of NY NW TIC
1001 Forest Glen
New Windsor, NY 12553

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATE:

FOR : Applied Building Dev. of NY NW TIC

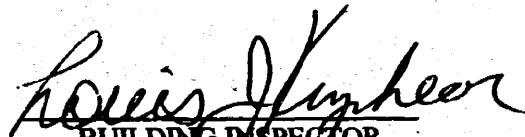
LOCATED AT: 1039 Rolling Ridge

ZONE: R-3 Sec/Blk/ Lot: **89-2-8**

DESCRIPTION OF EXISTING SITE: Vacant Subdivision Lot

IS DISAPPROVED ON THE FOLLOWING GROUNDS: 300-8 Table of Use Bulk Regulations R-3
Zone. Variances are required for 6C-Minimum lot area, 6D minimum lot width, 6E required front yard,
6F required side yard and total both yards.

COPY


BUILDING INSPECTOR

	PERMITTED	PROPOSED OR AVAILABLE:	VARIANCE REQUEST:
ZONE: R-3	USE: Single Family Dwelling		
MIN LOT AREA:	80,000sqft	22,154sqft	57,846sqft
MIN LOT WIDTH:	175	100.7	74.3
REQ'D FRONT YD:	45ft	35ft	10ft
REQ'D SIDE YD:	40ft	15ft	25ft
REQ'D TOTAL SIDE TD:	80ft	30ft	50ft
REQ'D REAR YD:			
REQ'D FRONTAGE:			
MAX BLDG HT:			
FLOOR AREA RATIO:			
MIN LIVABLE AREA:			
DEV COVERAGE:			

cc: Z.B.A., APPLICANT, FILE, W/ ATTACHED MAP

PLEASE ALLOW FIVE TO TEN DAYS TO PROCESS
IMPORTANT
YOU MUST CALL FOR ALL REQUIRED INSPECTIONS OF CONSTRUCTION

Other inspections will be made in most cases but those listed below must be made or Certificate of Occupancy may be withheld. Do not mistake an unscheduled inspection for one of those listed below. Unless an inspection report is left on the job indicating approval of one of these inspections it has not been approved and it is improper to continue beyond that point in the work. Any disapproved work must be reinspected after correction.

1. When excavating is complete and footing forms are in place (before pouring.)
2. Foundation inspection. Check here for waterproofing and footing drains.
3. Inspect gravel base under concrete floors and under slab plumbing.
4. When framing, rough plumbing, rough electric and before being covered.
5. Insulation.
6. Final inspection for Certificate of Occupancy. Have on hand electrical inspection data and final certified plot plan. Building is to be completed at this time. Well water test required and engineer's certification letter for septic system required.
7. Driveway inspection must meet approval of Town Highway Superintendent. A driveway bond may be required.
8. \$50.00 charge for any site that calls for the inspection twice.
9. Call 24 hours in advance, with permit number, to schedule inspection.
10. There will be no inspections unless yellow permit card is posted.
11. Sewer permits must be obtained along with building permits for new houses.
12. Septic permit must be submitted with engineer's drawing and perc test.
13. Road opening permits must be obtained from Town Clerk's office.
14. All building permits will need a Certificate of Occupancy or a Certificate of Compliance and here is no fee for this.

RECEIVED

NOV 04 2004

BUILDING DEPARTMENT

FOR OFFICE USE ONLY:
Building Permit #: 2004-1400

**AFFIDAVIT OF OWNERSHIP AND/OR CONTRACTOR'S COMP & LIABILITY INSURANCE CERTIFICATE IS
REQUIRED BEFORE THE BUILDING PERMIT APPLICATION WILL BE ACCEPTED AND/OR ISSUED**

PLEASE PRINT CLEARLY - FILL OUT ALL INFORMATION WHICH APPLIES TO YOU

Owner of Premises Applied Building Development
Address 1001 Rolling Ridge Phone # 629-5625
Mailing Address Same Fax # 567-7707
Name of Architect Anthony Coppola
Address Newburg Phone 561-3559

Name of Contractor Same As Above

Address _____ Phone _____

State whether applicant is owner, lessee, agent, architect, engineer or builder Owner/Builder

If applicant is a corporation, signature of duly authorized officer. Wm. Shuman
(Name and title of corporate officer)

1. On what street is property located? On the North side of Rolling Ridge 1039
(N, S, E or W)
and 50 feet from the intersection of Verde Vista

2. Zone or use district in which premises are situated R-2 Is property a flood zone? Y N ✓

3. Tax Map Description: Section 89 Block 2 Lot 8

4. State existing use and occupancy of premises and intended use and occupancy of proposed construction.

a. Existing use and occupancy _____ b. Intended use and occupancy Single Family Home

5. Nature of work (check if applicable) ☒ New Bldg. ☐ Addition ☐ Alteration ☐ Repair ☐ Removal ☐ Demolition ☐ Other

6. Is this a corner lot? No 65' 1/2"

7. Dimensions of entire new construction. Front 59' 2" Rear 59' 2" Depth 34' 10" Height 27 No. of stories 2

8. If dwelling, number of dwelling units: _____ Number of dwelling units on each floor _____

Number of bedrooms 4 Baths 2.5 Toilets 3 Heating Plant: Gas ✓ Oil _____
Electric/Hot Air ✓ Hot Water _____ If Garage, number of cars _____

9. If business, commercial or mixed occupancy, specify nature and extent of each type of use _____

10. Estimated cost _____ Fee \$50- **PAID**

CN# 7498

date

APPLICATION FOR BUILDING PERMIT
TOWN OF NEW WINDSOR, ORANGE COUNTY, NEW YORK
Pursuant to New York State Building Code and Town Ordinances

Building Inspector: Michael L. Babcock
Asst. Inspectors Frank Liel & Louis Krychear
New Windsor Town Hall
555 Union Avenue
New Windsor, New York 12553
(845) 563-4818
(845) 563-4895 FAX

Bldg Insp Examined _____
Fire Insp Examined _____
Approved _____
Disapproved _____
Permit No. _____

INSTRUCTIONS

- A. This application must be completely filled in by typewriter or in ink and submitted to the Building Inspector.
- B. Plot plan showing location of lot and buildings on premises, relationship to adjoining premises or public streets or areas, and giving a detailed description of layout of property must be drawn on the diagram, which is part of this application.
- C. This application must be accompanied by two complete sets of plans showing proposed construction and two complete sets of specifications. Plans and specifications shall describe the nature of the work to be performed, the materials and equipment to be used and installed and details of structural, mechanical and plumbing installations.
- D. The work covered by this application may not be commenced before the issuance of a Building Permit.
- E. Upon approval of this application, the Building Inspector will issue a Building Permit to the applicant together with approved set of plans and specifications. Such permit and approved plans and specifications shall be kept on the premises, available for inspection throughout the progress of the work.
- F. No building shall be occupied or used in whole or in part for any purpose whatever until a Certificate of Occupancy shall have been granted by the Building Inspector.

APPLICATION IS HEREBY MADE to the Building Inspector for the issuance of a Building Permit pursuant to the New York Building Construction Code Ordinances of the Town of New Windsor for the construction of buildings, additions, or alterations, or for removal or demolition or use of property as herein described. The applicant agrees to comply with all applicable laws, ordinances, regulations and certifies that he is the owner or agent of all that certain lot, place or parcel of land and/or building described in this application and if not the owner, that he has been duly and properly authorized to make this application and to assume responsibility for the owner in connection with this application.

[Signature]
(Signature of Applicant)

1001 Rolling Ridge New Windsor
(Address of Applicant)

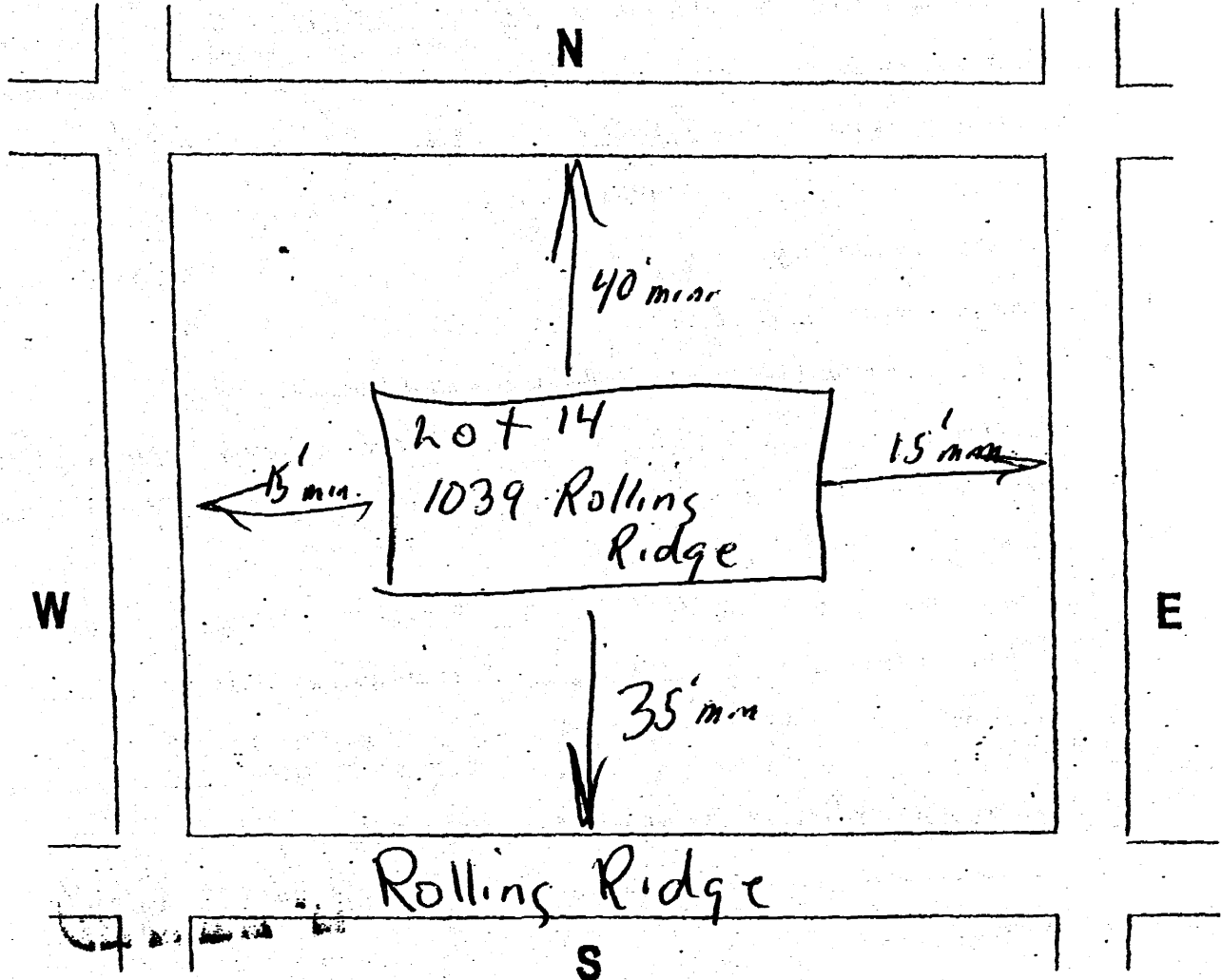
(Owner's Signature)

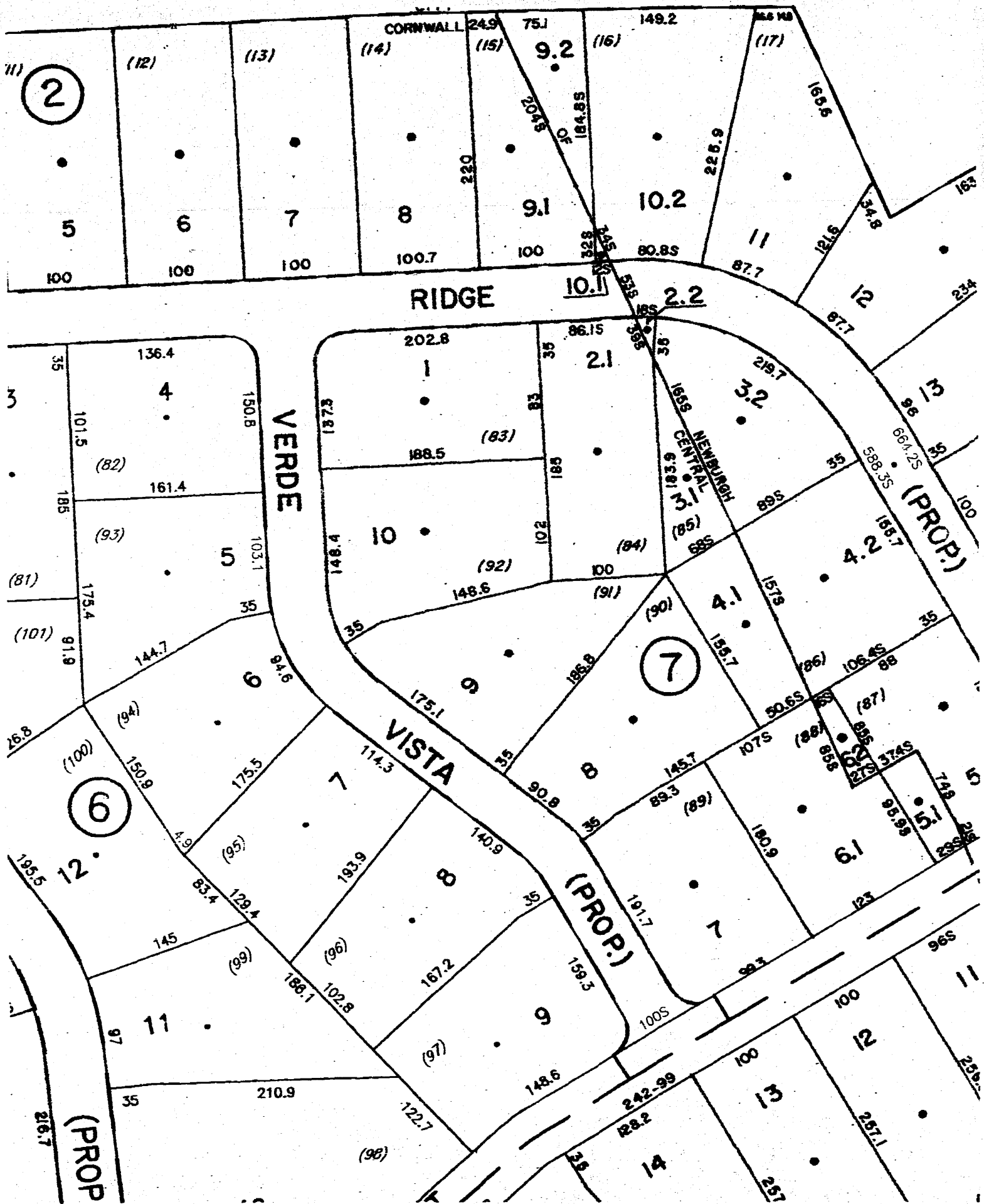
(Owner's Address)

PLOT PLAN

NOTE:

Locate all buildings and indicate all set back dimensions. Applicant must indicate the building line or lines clearly and distinctly on the drawings.







Town of New Windsor

**555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4615
Fax: (845) 563-4689**

OFFICE OF THE ZONING BOARD OF APPEALS

July 1, 2005

Applied Building Dev. of NY NW TIC
1001 Rolling Ridge
New Windsor, NY 12553

SUBJECT: REQUEST FOR VARIANCE #05-01

Dear Sir:

Please find enclosed two copies of the Formal Decision for your case before the Zoning Board of Appeals. Please keep these copies in your records for future reference if needed.

If you are in need of any further assistance or have any questions in this matter, please feel free to contact me at the above number.

Very truly yours,

**Myra Mason, Secretary to the
NEW WINDSOR ZONING BOARD**

MLM:mlm

cc: Michael Babcock, Building Inspector

NEW WINDSOR ZONING BOARD OF APPEALS
-----X

SBL: 89-2-6,7, & 8

In the Matter of the Application of

APPLIED BUILDERS

**MEMORANDUM OF
DECISION GRANTING**

AREA

CASE #05-01
-----X

WHEREAS, Adam Rodd, Esq. representing , owner(s) of 1035, 1037 & 1039 Rolling Ridge, New Windsor, New York, 12553, has made application before the Zoning Board of Appeals for a/an Request for an Interpretation and/or Variance of 300-8 Table of Use Bulk Regulations R-3 for:

57,846 sq. ft. Minimum Lot Area (6-C)

10 ft. Minimum Lot Width (6-D)

25 ft. Side Yard Setback (6-E)

50 ft. Total Side Yard (6-F)

For proposed single-family dwellings at 1035, 1037 and 1039 Rolling Ridge in an R-3 Zone (89-2-6,7&8)

WHEREAS, a public hearing was held on MARCH 14, 2005 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared on behalf of this Application; and

WHEREAS, there were no spectators appearing at the public hearing; and

WHEREAS, no one spoke in favor of or in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Times Herald Record, also as required by law.
2. The Evidence presented by the Applicant showed that:
 - (a) The property is a residential property consisting of now vacant lots located in a subdivision which was recently approved by the New Windsor Planning Board .

- (b) Because this lot is undeveloped and the zoning requirements of the Town of New Windsor have changed since this subdivision was approved, this application is necessary.
- (c) The applicant has three not yet built upon lots in a large subdivision. The applicant has completed substantial infrastructure completions, including, but not limited to, roadways, curbs, water lines, gas lines, and drainage. In addition, 98 of the approved 101 lots have been built upon. The applicant proposes to place homes on the remaining lots in accordance with the previously approved subdivision plan.
- (d) All of the houses, if permitted, will be serviced by Town sewer and water and there are not easements existing on any of the properties, including, but not limited to, water, sewer or electric easements.
- (e) Erection of the buildings will not divert the flow of water drainage or create the ponding or collection of water.
- (f) The dwellings proposed to be constructed on the three lots are similar in size and appearance to other buildings in the subdivision.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. Building Permits should be allowed for the three remaining lots in the subdivision owned by this applicant.
2. The Building Permits are allowed under the terms of the Town Code of the Town of New Windsor and the Law of the State of New York.
3. The requested variance(s) will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
4. There is no other feasible method available to the Applicant that can produce the benefits sought.
5. The variance(s) requested is/are substantial in relation to the Town regulations but, nevertheless, are warranted.
6. The requested variance(s) will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
7. The difficulty the Applicant faces in conforming to the bulk regulations is/are self-created but, nevertheless, should be allowed.

8. The benefit to the Applicant, if the requested variance(s) is/are granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community.
9. The requested variance(s) are/is appropriate and are/is the minimum variance(s) necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
10. The interests of justice will be served by allowing the granting of the requested area variance(s).

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for a Request for an Interpretation and/or Variance of 300-8 Table of Use Bulk Regulations R-3 for:

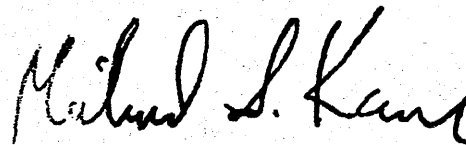
57,846 sq. ft. Minimum Lot Area (6-C)
10 ft. Minimum Lot Width (6-D)
25 ft. Side Yard Setback (6-E)
50 ft. Total Side Yard (6-F)

For proposed single-family dwelling at 1039 Rolling Ridge in an R-3 Zone (89-2-6,7&8) as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and/or Building Inspector and Applicant.

Dated: March 14, 2005



Chairman

**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
OFFICE
845-563-4615**

MEMORANDUM

TO: LARRY REIS, COMPTROLLER
FROM: MYRA MASON, SECRETARY TO THE ZONING BOARD
DATE: MARCH 29, 2005
SUBJECT: ESCROW REFUND

**PLEASE ISSUE A CHECK IN THE AMOUNT OF \$ 309.34 TO CLOSE OUT
ESCROW FOR:**

ZBA FILE #05-01

NAME & ADDRESS:

**DRAKE, SOMMERS, LOEB, TARSHIS, CATANIA & LIBERTH
ONE CORWIN COURT
NEWBURGH, NY 12550**

THANK YOU,

MYRA

L.R.03-29-2005



**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
RECORD OF CHARGES & PAYMENTS**



FILE #05-01 TYPE: AREA TELEPHONE: 567-6668

APPLICANT Name & Address:
Applied Building Dev. of NY NW TIC
1001 Rolling Ridge
New Windsor, NY 12553

CHECK FROM DRAKE, SOMMERS, LOEB, TARSHIS

RESIDENTIAL:	\$ 50.00	CHECK # _____
COMMERCIAL	\$ 150.00	CHECK # <u>10505 DRAKE, SOMM.</u>
INTERPRETATION	\$ 150.00	CHECK # _____

ESCROW: COMMERCIAL \$500.00 CHECK # 10506

~~~~~

| <u>DISBURSEMENTS:</u> | <u>MINUTES</u>       | <u>ATTORNEY</u> |
|-----------------------|----------------------|-----------------|
|                       | <u>\$5.50 / PAGE</u> | <u>FEE</u>      |

|                              |          |       |                 |                 |
|------------------------------|----------|-------|-----------------|-----------------|
| PRELIMINARY:                 | <u>9</u> | PAGES | \$ <u>49.50</u> | \$ <u>35.00</u> |
| 2 <sup>ND</sup> PRELIMINARY: | —        | PAGES | \$ _____        | \$ _____        |
| PUBLIC HEARING:              | <u>4</u> | PAGES | \$ <u>22.00</u> | \$ <u>35.00</u> |
| PUBLIC HEARING:              | —        | PAGES | \$ _____        | \$ _____        |

LEGAL AD: Publish Date: 01/31/05      \$ 49.16

TOTAL:      \$ 120.66      \$ 70.00

~~~~~

ESCROW POSTED: \$ 500.00 DRAKE, SOMMERS
LESS: DISBURSEMENTS: \$ 190.66

AMOUNT DUE: \$ _____

REFUND DUE: \$ 309.34

Cc:

APPLIED BUILDERS (05-01)

Adam Rodd, Esq. appeared before the board for this proposal.

MR. KANE: Request for an interpretation and/or variance of 300-8 Table of Use Bulk Regulations, R-3 for 57,846 sq. ft. minimum lot area, 10 ft. minimum lot width, 25 ft. side yard setback, 50 ft. total side yard for proposed single-family dwelling at 1039 Rolling Ridge.

MR. RODD: Good evening, my name is Adam Rodd with Drake Sommers on behalf of the applicant and with me is Dan Garon (phonetic) of Applied Builders, project manager Bill Schusler. Briefly to recap this was 101 lot subdivision that was approved by the Town back in 1999. At the time the application was submitted, all of the lots complied with all of the lot area, lot width, et cetera, the requirements of the zoning code. After the subdivision approval was granted, the infrastructure was put in and that is water lines, gas lines, streets, curbs, drainage, all the infrastructure. As a matter of fact, as I stand here now, 98 out of the 101 lots have been built out. So when we applied for a building permit initially it was denied by the building inspector because the time that the permit was submitted this was back in the fall of 2004 there was an upgrading of the zoning code such that this particular lot no longer complied. But pursuant to the materials we submitted in our application and that referenced the Town Law and the Ellington case the rule Town Board applied is that where the substantial infrastructure is put in within the three years following the subdivision approval the code requirements that were in place when the subdivision was approved are the ones that should apply and that's why we're here simply to ask you to affirm that interpretation.

MR. KRIEGER: Again, for the record, I received the, before this first appeared on the calendar I received a considerable amount of materials, actually had discussions with respect to the legal authority for that position and it is my opinion that it is legal authority as the applicant has represented.

MR. KANE: Thank you, Andy. That makes it fairly easy.

MR. REIS: The dwelling has not been started?

MR. RODD: On this particular lot, that's correct.

MR. REIS: It has not been?

MR. RODD: Right.

MR. BABCOCK: There's three lots, Mike, that have not been.

MR. KANE: Three lots left to go.

MR. BABCOCK: We're going to do all three of them tonight, that's why you have lot 6, 7 and 8, it was a suggestion by the board last time they were here instead of coming back for each lot and it was advertised that way, save them two trips.

MR. REIS: Dwelling is going to be comparable to other dwellings in the area?

MR. SCHUSLER: Identical.

MR. KANE: Not creating any water hazards or runoffs?

MR. SCHUSLER: No.

MR. KANE: Taking down any trees, substantial vegetation?

MR. SCHUSLER: No.

MR. KANE: No easements through the property?

MR. SCHUSLER: No.

MR. KANE: Town water and sewer?

MR. SCHUSLER: Yes.

MR. KANE: At this point, I'll open it up to the public and ask if there's anybody here for this particular hearing? Seeing that there's not, I will close the public portion, ask Myra about the mailings.

MS. MASON: On January 12, I mailed out 28 envelopes and had no response.

MR. KANE: Take it back to the board, any further questions?

MS. GANN: No.

MR. KANE: I'll accept a motion.

MR. REIS: Make a motion that we grant the Applied Builders their requested, how do you want to handle it, interpretation or variance?

MR. KANE: Interpretation.

MR. REIS: That we interpret this as a usable lot to include lot 6, 7 and 8 for proposed single family dwelling at 1039 Rolling Ridge.

MS. GANN: Second it.

ROLL CALL

March 14, 2005

26

MS. GANN	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. KANE	AYE

MR. RODD: Thank you.

PRELIMINARY MEETINGS:

APPLIED BUILDERS (05-01)

Adam Rodd, Esq. appeared before the board for this proposal.

MR. KANE: Request for variance of 57,846 sq. ft. minimum lot area, 10 ft. minimum lot width, 25 ft. side yard setback, 50 ft. total side yard for proposed single-family dwelling at 1039 Rolling Ridge.

New Windsor does two meetings, basically, we do a preliminary meeting so that we get an understanding of what you want to do and then you also get an understanding of what we require. A lot of towns do one shot, you come in, you ask, if you don't have the right stuff, you lose. We do a preliminary hearing then the public which will be the exact same thing but it will be on the record. Okay, so tell us what you want to do, sir.

MR. RODD: In a nutshell, thank you for your time. My name is Adam Rodd with the law firm of Drake Sommers on behalf of Applied Building Development. With me in the event that you have any questions is Bill Schusler (phonetic), who is the project manager of Applied Building and Dan Garon (phonetic) of Applied Building Development. In a nutshell and I believe the board is probably familiar this has to do with a lot in the Forest Glenn subdivision, specifically at 1039 Rolling Ridge Road. Back in 1999, the subdivision which is a 101 lot subdivision was approved and the map was filed with the planning board. Since that time, there has been a tremendous amount of infrastructure and expenditure made with respect to the subdivision. As a matter of fact, as I stand here now, 98 of the lots are already built so it's 98 houses already up out of 101 that has been approved. During this interval period of time, the Town of New Windsor amended their zoning ordinance to change some of the bulk requirements such

as the setbacks and the minimum lot areas while the subdivision was being developed. With respect to this particular lot that's the subject of this application we do have a buyer for this lot and a specific house model so we're able to figure out the setbacks for that lot. We applied for a building permit to begin construction and the building inspector indicated in good faith that the proposed improvement on that particular lot doesn't conform with the new zoning that was implemented. So the reason why we're here is to ask for an interpretation and in our application materials and we submitted it to counsel for the board there's a pretty clear subdivision rule that applies in this case that where it can be demonstrated that after the subdivision was approved that the applicant made expenditures and improvements towards completion that subdivision, the zoning bulk regulations that were in effect at the time that the subdivision was approved applied. So we're simply asking for an interpretation essentially upholding that rule in connection with this particular lot and that's it.

MR. KANE: Michael, enlighten me, how does it work with a subdivision with all these homes they're not pre-approved or do they go permit by permit for them?

MR. BABCOCK: Well, each lot, you know, if this lot wasn't built on for 10 years, 15 years, 20 years, 30 years, whatever it might be, the way that I read the code is that you have three years from the time of a zone change to obtain your building permit which was October 3 of 2001. So if they came in here October 3 or October 2 of 2003 up till 2004 I should say they would have gotten a building permit.

MR. RODD: If I could just, and I think I will also defer to your counsel to speak to that issue, the law's pretty clear about what has to be done under the three year period of time from the time the subdivision is granted in order to have the right to build under the

zoning that was in effect at the time the subdivision was granted. And the court of appeals indicated and that is the Ellington case that the developer has to make substantial expenditures towards construction of a subdivision itself, the developer or the applicant need not apply for a building permit for every lot in the subdivision during that three year period. And that was exactly the fact pattern in the Ellington case where actually that case had facts that clearly support our position because in the Ellington case it was a subdivision where there were two facets to the development, the second facet there were no houses up at all, zero houses, just utilities, the lines, and four years after the subdivision was granted, the applicant in that case asked for a building permit, the building inspector said no because you didn't get a building permit in three years, it went up to the court of appeals and the court of appeals said regardless of whether there are any houses up all that needs to be shown are the expenditures and improvements towards completing the subdivision itself during three years then you have vested rights.

MR. KANE: So you have spent a lot of money since the last time a house was built in that subdivision till now on the improvement of this subdivision?

MR. RODD: I can represent and it's indicated in the application based on the performance bonds well over three million dollars has been spent.

MR. KANE: So there's been constant construction going on in the development but it's more infrastructure than building the buildings?

MR. RODD: During the three years obviously the infrastructure goes first in terms of the utility lines, the sewer lines and all that stuff, not only has the infrastructure been placed, there's 98 out of the 101 houses that are up.

MR. KANE: I just want to get a clear picture.

MR. SCHUSLER: It's been three years since the infrastructure has been finished, completed.

MR. KANE: Why the delay with getting to the last house, were you waiting for somebody to purchase it then build?

MR. RODD: Yes.

MR. KANE: For the public portion of the meeting, I think correct me if I'm wrong, you have the ability to build 101 homes, correct, and 98 are done, do you plan coming back individually for a variance for each one as we go through?

MR. BABCOCK: Yes, cause it's only three lots and I think--

MR. KANE: There's no way to handle that in one?

MR. KRIEGER: Mr. Chairman, I don't think so, there isn't any way to handle it and I have been in contact with counsel well before this building has been represented now there's no way because they wouldn't know what exactly they would need until they know what building they're going to put there so they're not able at this point to make any kind of blanket--

MR. KANE: If I can save you some money from coming back, that's what I would be looking at doing, if we can clear it up in one shot but that's not going to be the case.

MR. RODD: We're interested in an interpretation upholding the Ellington case and the law that's set forth in I believe it's Town Law 265-A which basically talks about--

MR. KANE: For the public portion of the hearing you would provide a copy of that case to the board?

MR. RODD: I already submitted it with the application, yes.

MR. KRIEGER: Yes, he supplied a copy of that to me. I have reviewed it, it's been brought up to date to make sure it's still good law, it has been and was, well, the section I have reviewed, the section of the Town Law, the New York State Town Law, the building inspector's perfectly correct when you deal with the law here, the Town of New Windsor's Town Law, when I say the town, the Town Law, I mean the Town Law of the State of New York, it's there, it's in that body that this exception on which the case cited by counsel was based is located, it's not within the, the laws of the Town of New Windsor are silent on the subject case.

MR. KANE: Does his example in this case have merit?

MR. KRIEGER: Yes.

MR. BABCOCK: If it's an interpretation and that's what we're doing, if it's the interpretation of this board would be that he's entitled to a building permit then he would be entitled to all three building permits, not just this one.

MR. KRIEGER: Provided an interpretation is rendered by this board that its old zoning law is applicable so if they fell within that envelope then the building inspector would apply that interpretation and there would be no need for them to reappear for the two subsequent.

MR. REIS: Counsel is requesting I guess to keep it simple, an interpretation rather than a full blown variance?

MR. RODD: Correct.

MR. REIS: To establish that again we don't have enough information for the second and third lots though.

MR. KRIEGER: No, the interpretation is basically a legal question, if he were to apply for an area variance, then he would have to apply for each lot ad seriatum as they come up because it would only apply to that particular--

MR. KANE: Under the old zoning you need no variances whatsoever with the homes you intend to build?

MR. RODD: Right, every lot conforms to the applicable zoning at the time the subdivision was approved.

MR. BABCOCK: If he comes back to me on one of the other lots and wants to build a house that's 400 feet long it's not going to meet the lot then he will be back here for a variance but if he stays within the buildable lot of the existing zoning--

MR. KANE: Then he won't need anything.

MR. BABCOCK: That's right, the interpretation is basically whether he's allowed to build it or not.

MR. KANE: Any other questions?

MR. REIS: My feeling is that if we may, well, we've still got to go to a public hearing.

MR. KANE: Can't be decided tonight, the preliminary hearing has to be done and there's newspaper notices, the whole nine yards.

MR. RODD: We're willing to do that, I would just

mention that because it's simply an interpretation, that is an interpretation of the ordinance as it applies I don't think there's any legal requirement for a public hearing on an interpretation issue.

MR. KANE: Everything decided by the zoning board has to be done in a public forum and the way New York State law is, I think we'll continue doing what we normally do rather than play any games and try to cut it, as long as you meet all of the requirements, we get the mailing out, you should be back here in, you know, next meeting, it's a couple weeks.

MR. KRIEGER: I think that's the safer practice. Applicant should also be aware of the fact, let me remind them as I know they're already aware a public hearing does not mean that it's some kind of vote or referendum, it's merely an information gathering tool for the members of the board. This is a rather unique application in the sense that it is almost purely a legal interpretation. So it's entirely possible if not likely that information proffered at the public hearing will not be relevant but since it is possible that somebody will come in--

MR. KANE: I prefer to stay with our, the way we do business.

MR. RODD: That's fine.

MR. REIS: In order to expedite this perhaps for yourself and your clients, can you identify the total three lots that will necessitate interpretation or a variance?

MR. RODD: Sure.

MR. REIS: Can you do that today now?

MR. RODD: In terms of section, block and lot?

MR. REIS: Or an address, my thought was to make it inclusive.

MR. BABCOCK: They probably don't have an address.

MR. KANE: You don't need to make them inclusive, we're doing an interpretation of the law, the law states that basically that they're free without getting individual building permits they're allowed to build under the old zoning and it doesn't matter as long as it's in that subdivision they don't have to.

MR. BABCOCK: If you want, I don't think they actually have an address until they apply for a permit, then they get a 9-1-1 address today, I mean, today's code you have that. Prior back then, they didn't do that so they may not have an address but for the public hearing we can give you the other two lots this way they're identified, we can put a copy in each file.

MR. KANE: All three lots cover them under this particular interpretation.

MR. BABCOCK: Anybody looks in the files they're covered.

MR. KANE: May I have a motion?

MR. REIS: Make a motion that we set up Applied Builders for their, for the three lots remaining at Rolling Ridge for an interpretation section, block and lot to be determined.

MS. GANN: I'll second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE

January 10, 2005

10

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE



RESULTS OF Z.B.A. MEETING OF: March 14, 2005

PROJECT: Applied Bldgs - Forest Glen ZBA # 05-01
Lots 6, 7 & 8 P.B.# _____

USE VARIANCE: **NEED: EAF** _____ **PROXY** _____

LEAD AGENCY: M) _____ S) _____ VOTE: A _____ N _____

GANN _____
LOCEY _____
RIVERA _____
MCDONALD _____
REIS _____
KANE _____

CARRIED: Y _____ N _____

PUBLIC HEARING: M)_____ **S)**_____ **VOTE: A**_____ **N**_____

GANN	_____	
LOCEY	_____	
RIVERA	_____	
MCDONALD	_____	CARRIED: Y _____ N _____
REIS	_____	
KANE	_____	

NEGATIVE DEC: M)_____S)_____ VOTE: A___ N___

GANN _____
LOCEY _____
RIVERA _____
MCDONALD _____ CARRIED: Y _____ N _____
REIS _____
KANE _____

APPROVED: M)_____S)_____ VOTE: A_____N_____

GANN _____
LOCEY _____
RIVERA _____
MCDONALD _____
REIS _____
KANE _____

CARRIED: Y _____ N _____

ALL VARIANCES - PRELIMINARY APPEARANCE:

SCHEDULE PUBLIC HEARING: M)___ S)___ VOTE: A___ N___

GANN
LOCEY
RIVERA
MCDONALD
REIS
KANE

CARRIED: Y_____ N_____

PUBLIC HEARING: STATEMENT OF MAILING READ INTO MINUTES ✓
VARIANCE APPROVED: M) RS S) GN VOTE: A 4 N 0.

GANN	A
LOCEY	
RIVERA	A
MCDONALD	
REIS	A
KANE	A

CARRIED: Y ✓ N

Interpretation

**ZONING BOARD OF APPEALS: TOWN OF NEW WINDSOR
COUNTY OF ORANGE: STATE OF NEW YORK**

APPLIED BUILDERS (FOREST GLEN)

#05-01

X

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

MYRA L. MASON, being duly sworn, deposes and says:


That I am not a party to the action, am over 18 years of age and reside at 67 Bethlehem Road, New Windsor, NY 12553.

That on the 12TH day of JANUARY, 2005, I compared the 28 addressed envelopes containing the Public Hearing Notice pertinent to this case with the certified list provided by the Assessor's Office regarding the above application for a variance and I find that the addresses are identical to the list received. I then placed the envelopes in a U.S. Depository within the Town of New Windsor.

Sworn to before me this

Myra L. Mason
Myra L. Mason, Secretary

14th day of February, 2005


Notary Public

JENNIFER MEAD
Notary Public, State Of New York
No. 01ME6050024
Qualified In Orange County
Commission Expires 10/30/ 2006

PUBLIC HEARING NOTICE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing on the following Proposition:

Appeal No. 05-01

Request of APPLIED BUILDERS (FOREST GLEN SUBDIVISION)

for an INTERPRETATION AND/OR VARIANCE of the Zoning Local Law to Permit:

Request for Variance of 300-8 Table of Use Bulk Regulations R-3:

57,846 sq. ft. Minimum Lot Area (6-C)

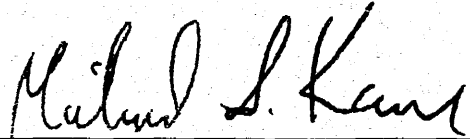
10 ft. Minimum Lot Width (6-D)

25 ft. Side Yard Setback (6-E)

50 ft. Total Side Yard (6-F)

**For proposed single-family dwelling at 1039 Rolling Ridge
in an R-3 Zone (89-2-6, 7 & 8)**

**PUBLIC HEARING will take place on FEBRUARY 14TH, 2005
at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York
beginning at 7:30 P.M.**



Michael Kane, Chairman



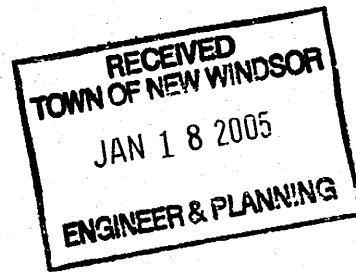
Town of New Windsor

555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4631
Fax: (845) 563-4693

Assessors Office

January 13, 2005

Stephen Gaba
Drake, Sommers, et al
One Corwin Court
Newburgh, NY 12550



Re: 89-2-8

ZBA#: 05-01 (28)

Dear Mr. Gaba:

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

The charge for this service is \$45.00, minus your deposit of \$25.00.

Please remit the balance of \$20.00 to the Town Clerk's Office.

Sincerely,

J. Todd Wiley, IAO
Sole Assessor

JTW/tmp
Attachments

CC: Myra Mason, ZBA

65-1-17

Kartiganer Family Limited Partnership
c/o Herbert Kartiganer
3928 Live Oak Blvd
DelRay Beach, FL 33445

65-1-88.1

Joseph & Carol Passaro
38 Passaro Drive
New Windsor, NY 12553

89-2-11

Dominic & Judith Cascone
1045 Rolling Ridge
New Windsor, NY 12553

89-6-1

Concetta Cacioppo
1028 Rolling Ridge
New Windsor, NY 12553

89-6-4

Jared Flagg
Judith Richards Flagg
1034 Rolling Ridge
New Windsor, NY 12553

89-6-7

Robert & Kathleen Santarsiero
1005 Verde Vista
New Windsor, NY 12553

89-7-1

John Channell
Kathleen Camell
1036 Rolling Ridge
New Windsor, NY 12553

89-7-4.1 & 89-7-4.2

Michael & Claudine Lynch
1042 Rolling Ridge
New Windsor, NY 12553

89-7-7

David & Stacy Zagon
1002 Verde Vista
New Windsor, NY 12553

89-7-10

Vincent Dobilas
Barbara Stahl
1008 Verde Vista
New Windsor, NY 12553

65-1-19.2

NYC Dept of EP
c/o City of NY Dep. Bureaus of Water
Supply - OWSL
465 Columbus Ave. - Suite 350
Valhalla, NY 10595

89-2-4

Adam & Karen Lipton
1031 Rolling Ridge
New Windsor, NY 12553

89-2-13

William Kodl
1049 Rolling Ridge
New Windsor, NY 12553

89-6-2

Atanda & Oluwakemi Owolabi
1030 Rolling Ridge
New Windsor, NY 12553

89-6-5

John & Barbara Boyer
1009 Verde Vista
New Windsor, NY 12553

89-6-8

Alan & Pamela Fox
1003 Verde Vista
New Windsor, NY 12553

89-7-2.1 & 89-7-2.2

Bryan & Julia DiGiovanni
1038 Rolling Ridge
New Windsor, NY 12553

89-7-5.2

Michael Squillante
1044 Rolling Ridge
New Windsor, NY 12553

89-7-8

Eileen & Christopher Murphy
1004 Verde Vista
New Windsor, NY 12553

65-1-33

Ruby Nemeth
P.O. Box 91
Vails Gate, NY 12584

89-2-5

Gary & Rosemarie Zlotnick
1033 Rolling Ridge
New Windsor, NY 12553

89-2-14

Kenneth & Leslie Barr
1051 Rolling Ridge
New Windsor, NY 12553

89-6-3

Ann Sissler
Ann Rettus
1032 Rolling Ridge
New Windsor, NY 12553

89-6-6

John Cito, Jr.
1007 Verde Vista
New Windsor, NY 12553

89-6-13

Mark & Rosemarie Amici
1022 Forest Glen
New Windsor, NY 12553

89-7-3.1 & 89-7-3.2

William & Patricia Amaro
1040 Rolling Ridge
New Windsor, NY 12553

89-7-6.1 & 89-7-6.2

John Gaines
Sherri Huntzinger
1016 Summit Woods
New Windsor, NY 12553

89-7-9

Kevin & Lauree MacKay
1006 Verde Vista
New Windsor, NY 12553



Town of New Windsor

555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4615
Fax: (845) 563-4695

ZONING BOARD OF APPEALS

January 27, 2005

Applied Building Dev. of NY NW TIC
1001 Rolling Ridge
New Windsor, NY 12553

SUBJECT: REQUEST FOR VARIANCE #05-01

Dear Sir:

This is just to let you know your Notices for Public Hearing were mailed out and the notice was also sent to The Times Herald Record Newspaper for publication. **PLEASE NOTE: The charge for publication in the Times Herald Record will be deducted from your escrow that was posted with your application papers.**

Your Public Hearing before the Zoning Board of Appeals for your requested variance at:

1039 Rolling Ridge
New Windsor, NY

is scheduled for the FEBRUARY 14, 2005 agenda.

This meeting starts at 7:30 p.m. and is held in the Town Meeting Room at Town Hall. If you have any questions or concerns in this matter, please feel free to contact me.

Very truly yours,

Myra Mason, Secretary
Zoning Board of Appeals

MLM:mlm

CC: Stephen Gaba – Drakes, Sommers, et al

TIMES HERALD-RECORD

40 Mulberry Street, Middletown, NY 10940

State of New York:

County of Orange: ss:

Patricia Foddrill

Being duly sworn deposes and says that the ORANGE COUNTY PUBLICATIONS Division of Ottaway Newspapers-Radio, Inc. is a corporation organized under the laws of the State of New York and is, at all the times hereinafter mentioned, was the printer and publisher of The Times Herald-Record, a daily newspaper distributed in the Orange, Ulster, Rockland, Dutchess, Pike, PA, Delaware and Sullivan Counties, published in the English language in the City of Middletown, County of Orange, State of New York, that despondent is the

Legal Advertising Representative

of said The Times Herald-Record acquainted with the facts hereinafter stated, and duly authorized by said Corporation to make this affidavit; that the

Legal Notice

a true printed copy of which is hereunto annexed, has been duly and regularly published in the manner required by law in said The Times Herald-Record in each of its issues published upon each of the following dates, to wit: In its issues of

1/31/05

Signature of Representative:

P. Foddrill

Sworn in before me this

31

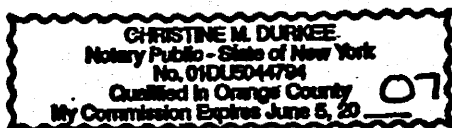
Day of

Jan

2005

Christine M. Durkee

Notary Public, Orange County



**PUBLIC HEARING NOTICE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing on the following Proposition:

Appeal No. 05-01
Request of APPLIED BUILDERS
(FOREST GLEN SUBDIVISION)
for an INTERPRETATION AND / OR VARIANCE of
the Zoning Local Law to Permit Request for Variance of
300-8 Table of Use Bulk Regulations R-3:
57,846 sq. ft. Minimum Lot Area (6-C)
10 ft. Minimum Lot Width (6-D)
25 ft. Side Yard Setback (6-E)
50 ft. Total Side Yard (6-F)
For proposed single-family dwelling at 1039 Rolling Ridge
in an R-3 Zone (89-2-6, 7 & 8)

PUBLIC HEARING will take place on FEBRUARY
14, 2005 at the New Windsor Town Hall, 555 Union Avenue,
New Windsor, New York beginning at 7:30 P.M.

MICHAEL KANE, CHAIRMAN

Ad Number: 1727301 Advertiser: NEW WINDSOR, TOWN

Phone: 8455634615 Sys No: 1194114 Caller: MYRA MASON

INVOICING CUSTOMER:

Phone: 8455634615 Sys No: 1194114 AcctNo: P.O. No:

Name: NEW WINDSOR, TOWN Subscriber:

Address: ZONING AND PLANNING

555 UNION AVENUE

NEW WINDSOR NY 12553

ORDER:

Printed By: THRFODRIL Date: 01/27/2005 Assigned Sales: PUBLICHEARINGNOTICE ZONINGBOARD OF APPEAL AdType: LINER Order Type: NORMAL

Manual Delay: Box No: Call Back: Y

NOTES:

Change Reason:

INSERTION:

Product: THL Paper: IM Class: 999X

Schedule: Start Date - 01/31/2005 End Date - 01/31/2005

Sort: PUBLIC HEARING NOTICE ZONING BOARD OF APP

PRODUCTION:

Text Size: 2 x 28.00 ProdType: ENTERPRISE ColorNo: 0 Colors:

Tearsheets: 1 Proofs: 0 Affidavits: 1 Alt Addr: N

PRICING:

Price: 49.16 Payment Method: B1 Amount Paid: 0 Amount Owed: 49.16

Price Method: 0 (0=Normal, 1=User Net, 2=System Gross) Rate Code: LEL

For fields listed below 0 = NO 1 = YES

Till Forbid: 0 Mult. Content: 0

**PUBLIC HEARING NOTICE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing on the following Proposition:

05-01

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Request of APPLIED BUILDERS
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for an INTERPRETATION AND / OR VARIANCE of
the Zoning Local Law to Permit: Request for Variance of
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57,846 sq. ft. Minimum Lot Area (6-C)
10 ft. Minimum Lot Width (6-D)
25 ft. Side Yard Setback (6-E)
50 ft. Total Side Yard (6-F)
For proposed single-family dwelling at 1039 Rolling Ridge
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PUBLIC HEARING will take place on FEBRUARY
28, 2005 at the New Windsor Town Hall, 555 Union Avenue,
New Windsor, New York beginning at 7:30 P.M.

MICHAEL KANE, CHAIRMAN

Ad Number: 1733079 Advertiser: NEW WINDSOR, TOWN

Phone: 8455634615 Sys No: 1194114 Caller: MYRA MASON

INVOICING CUSTOMER:

Phone: 8455634615 Sys No: 1194114 AcctNo: P.O. No:

Name: NEW WINDSOR, TOWN Subscriber:

Address: ZONING AND PLANNING

555 UNION AVENUE

NEW WINDSOR NY 12553

ORDER:

Printed By: THRFODRIL Date: 02/17/2005 Assigned Sales: PUBLICHEARINGNOTICE ZONINGBOARD OF APPEAL AdType: LINER Order Type: NORMAL

Manual Delay: Box No: Call Back: Y

NOTES:

Change Reason:

INSERTION:

Product: THH Paper: IN Class: 999X; LEGAL BILLING

Schedule: Start Date - 02/21/2005 End Date - 02/21/2005

Sort: PUBLIC HEARING NOTICE ZONING BOARD OF APP

PRODUCTION:

Text Size: 2 x 28.00 ProdType: ENTERPRISE ColorNo: 0 Colors:

Tearsheets: 1 Proofs: 0 Affidavits: 1 Alt Addr: N

PRICING:

Price: 49.16 Payment Method: BI Amount Paid: 0 Amount Owed: 49.16

PriceMethod: 0 (0=Normal, 1=User Net, 2=System Gross) Rate Code: LEL

For fields listed below 0 = NO 1 = YES

Till Forbid: 0 Mult. Content: 0

TIMES HERALD-RECORD

40 Mulberry Street, Middletown, NY 10940

State of New York:

County of Orange: ss:

Patricia Foddrill

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Legal Sales Representative

of said The Times Herald-Record acquainted with the facts hereinafter stated, and duly authorized by said Corporation to make this affidavit; that the

Legal Notice

a true printed copy of which is hereunto annexed, has been duly and regularly published in the manner required by law in said The Times Herald-Record in each of its issues published upon each of the following dates, to wit: In its issues of

7/21/05

05-01

Signature of Representative

[Handwritten Signature]

Sworn in before me this

21

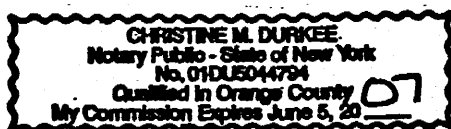
Day of

[Handwritten Signature]

2005

[Handwritten Signature]

Notary Public, Orange County



TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

RECEIPT OF ESCROW RECEIVED:

DATE RECEIVED: 12-30-2004

FOR: ESCROW 05-01

FROM: **DRAKE, SOMMERS, LOEB, TARSHIS, CATANIA & LIBERTH**

One Corwin Court

Newburgh, NY 12550

For: Applied Bldrs.

CHECK NUMBER: 10506

TELEPHONE: 565-1100

AMOUNT: 500.00

RECEIVED AT COMPTROLLER'S OFFICE BY:

NAME

DATE

PLEASE RETURN ONE SIGNED COPY TO MYRA FOR FILING

THANK YOU

Town of New Windsor
555 Union Avenue
New Windsor, NY 12553
(845) 563-4611

RECEIPT
#16-2005

01/04/2005

Drake Sommers, Loeb, Etal [#]05-01

Received \$ 150.00 for Zoning Board Fees, on 01/04/2005. Thank you for
stopping by the Town Clerk's office.

As always, it is our pleasure to serve you.

Deborah Green
Town Clerk



RESULTS OF Z.B.A. MEETING OF: January 2005

PROJECT: Applied Bldg - Forest Glen Sub. ZBA # 05-01
P.B.# 97-11

USE VARIANCE: NEED: EAF PROXY

LEAD AGENCY: M) S) VOTE: A N

GANN
LOCEY
RIVERA
MCDONALD
REIS
KANE
CARRIED: Y N

PUBLIC HEARING: M) S) VOTE: A N

GANN
LOCEY
RIVERA
MCDONALD
REIS
KANE
CARRIED: Y N

NEGATIVE DEC: M) S) VOTE: A N

GANN
LOCEY
RIVERA
MCDONALD
REIS
KANE
CARRIED: Y N

APPROVED: M) S) VOTE: A N

GANN
LOCEY
RIVERA
MCDONALD
REIS
KANE
CARRIED: Y N

ALL VARIANCES - PRELIMINARY APPEARANCE:

SCHEDULE PUBLIC HEARING: M) RS S) G VOTE: A 5 N 0

GANN
LOCEY
~~RIVERA~~ Rivera
MCDONALD
REIS
KANE
A
A
A
A
A

CARRIED: Y ☒ N

PUBLIC HEARING: STATEMENT OF MAILING READ INTO MINUTES
VARIANCE APPROVED: M) RS S) VOTE: A N

GANN
LOCEY
RIVERA
MC DONALD
REIS
KANE

CARRIED: Y N

89-26

89-2-7

89-2-8

"Interpretation"

Three remaining lots of 101 lot Subdivision - Each lot must be applied for separately.

If Interpretation is granted that this lot is acceptable, the other lots will not have to apply.

Include other two lots on Public Hearing



Town of New Windsor

**555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4615
Fax: (845) 563-4695**

ZONING BOARD OF APPEALS

January 3, 2005

Applied Building Dev. of NY NW TIC
1001 Rolling Ridge
New Windsor, NY 12553

SUBJECT: REQUEST FOR VARIANCE #05-01

Dear Sir:

This letter is to inform you that you have been placed on the January 10, 2005 agenda for the Zoning Board of Appeals to discuss your request for a variance at:

1039 Rolling Ridge
New Windsor, NY

This meeting starts at 7:30 p.m. and is held in the Town Meeting Room at Town Hall. If you have a problem with this time and/or date, please contact me at the above number and we will reschedule your appearance. If you have any further questions, please feel free to contact me.

Very truly yours,

Myra Mason, Secretary
Zoning Board of Appeals

MLM:mlm

Cc: Drake, Sommers, Loeb, Tarshis, Catania & Liberth, PLLC
Stephen J. Gaba

regard for the law that he was willing to perpetuate a 16-year fraud on both his employers and the public.

We demean the process as a whole when we hold, in essence, that the Grand Jury proceeding was not fatally tainted by either Penofsky's lack of admission to the Bar or his criminally fraudulent conduct. Accordingly, I would hold that the indictment under which defendant was prosecuted was defective and should have been dismissed.

113WACHTLER, C.J., and SIMONS, KAYE and BELLACOSA, JJ., concur with HANCOCK, J.

TITONE, J., dissents and votes to reverse in a separate opinion in which ALEXANDER, J., concurs.

In each case: Order affirmed.



566 N.E.2d 128

77 N.Y.2d 114

114In the Matter of ELLINGTON CONSTRUCTION CORP.,
Respondent,

v.

ZONING BOARD OF APPEALS OF
THE INCORPORATED VILLAGE
OF NEW HEMPSTEAD, Appellant.

Court of Appeals of New York.

Dec. 20, 1990.

Developer commenced proceeding to vacate decision of village zoning board of appeals confirming denial by village building inspector of application for building permit. The Supreme Court, Rockland County, Rosato, J., entered judgment for developer, and board appealed. The Supreme Court, Appellate Division, 152 A.D.2d 365, 549 N.Y.S.2d 405, modified judgment and affirmed. Board appealed by permission granted. The Court of Appeals, Hancock, J., held that: (1) Village

Law's three-year exemption period from zoning amendment increasing lot area or dimension requirements permitted developer to secure right to complete subdivision in accordance with existing zoning requirements by manifesting commitment to execution of subdivision plan through completing improvements and incurring expenditures in connection therewith, during exemption period, sufficient to constitute vesting under common-law rules, and (2) substantial improvements and expenditures made by developer during three-year exemption period were sufficient to confer vested right to obtain building permits in accordance with provisions of former zoning ordinance.

Supreme Court, Appellate Division, affirmed.

1. Statutes §214

In construing statute, Court of Appeals need look no further than statute itself if statute is unambiguous and its meaning evident from language.

2. Zoning and Planning §325

When more restrictive zoning ordinance is enacted, owner will be permitted to complete structure or development which amendment has rendered nonconforming only where owner has undertaken substantial construction and made substantial expenditures prior to effective date of amendment.

3. Zoning and Planning §376

Rule of construction that zoning legislation which is in derogation of common law must be strictly construed against municipality which seeks to enforce it would be contravened by interpreting statutory exemption provisions, which provide exemption period after filing of subdivision plat during which amendment increasing lot area or dimension requirements shall not be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat, as applying to a lot only when developer has actually completed lot or obtained building permit for it during exemption period. McKinney's Vil-

lage Law § 7-708, subd. 2; McKinney's Town Law § 265-a; McKinney's General City Law § 83-a, subd. 2.

4. Zoning and Planning ¶376

Provision of Village Law, which establishes exemption period of three years after filing of subdivision plat during which zoning amendment increasing lot area or dimension requirements shall not be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat, was intended to permit developer to secure the right to complete subdivision in accordance with existing zoning requirements by manifesting a commitment to execution of subdivision plan through completing improvements and incurring expenditures in connection therewith, during exemption period, sufficient to constitute vesting under common-law rules. McKinney's Village Law § 7-708, subd. 2.

5. Zoning and Planning ¶376

Subdivision owner is exempt under Village Law from compliance with new, more stringent area and dimension requirements upon applying for building permits for its remaining lots, where owner takes sufficient steps toward completion of proposed subdivision, and thus acquires common-law vested rights, before expiration of Law's three-year exemption period from new zoning requirements. McKinney's Village Law § 7-708, subd. 2.

6. Statutes ¶212.3

Court of Appeals must presume that Legislature could not have intended interpretation of statute which produces unreasonable and potentially unjust consequences.

1. Insofar as is pertinent, Village Law § 7-708 provides:

"2. (a) Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning law hereafter adopted, and the provisions of a change or amendment hereafter adopted to a zoning law which provisions establish or increase lot areas, lot dimensions which are greater than or in excess of the lot areas or lot dimensions of the lots shown and delineated on a subdivision plat of land into lots for residential use and which said subdivision plat also shows and delineates one or more new streets, roads or highways in addition to lot lines and

7. Zoning and Planning ¶376

Developer made substantial improvements and expenditures during exemption period provided by Village Law, which establishes three-year exemption period after filing of subdivision plat during which amendment increasing lot area or dimension requirement shall not be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat, and thus developer had vested right to obtain building permits in accordance with provisions of former zoning ordinances for proposed lots in subdivision; prior to village's amendment of its zoning ordinance, developer had installed drainage facilities, water and sewer lines, fire hydrants, curbs and curb cuts, and underground telephone and electric service, and developer subsequently, with village's knowledge, had installed paved road. McKinney's Village Law § 7-708, subd. 2.

¶115Doris F. Ulman, Village Atty. (Frank I. Brown, Spring Valley, of counsel), for appellant.

¶116John S. Edwards, New York City, for respondent.

¶117Barbara J. Samel, Schenectady, for the New York State Conference of Mayors and Other Mun. Officials, amicus curiae.

OPINION OF THE COURT

HANCOCK, Judge.

For a village having both a Planning Board and a ¶118Zoning Board of Appeals, Village Law § 7-708(2)¹ establishes an ex-

dimensions of the lots thereon delineated and which said subdivision plat has been duly approved by the planning board, if any, of the village in which the land shown on said plat is situate, or approved by such other board or officer, if any, of such village, vested with authority to approve subdivision plats, and which said subdivision plat or the first section thereof has been duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate, or which provisions establish or increase side, rear or front yard or set-back requirements in excess of those applicable to building plats under the provision of the zoning law, if any, in force and

emption period of three years after the filing of a subdivision plat during which an amendment increasing lot area or dimension requirements shall not "be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat" (§ 7-708(2)(a)). Prior to an increase in the applicable area and dimension requirements, the owner of an approved subdivision failed to complete it or to apply for building permits on all of the proposed lots. It did, however, take sufficient steps toward completion of the proposed subdivision before the exemption period expired to acquire common-law vested rights. The question presented by the appeal of respondent Zoning Board is whether the petitioner owner, by virtue of these vested rights, is exempt from compliance with the new, more stringent area and dimension requirements when it applies for building permits for its remaining lots. Supreme Court and the Appellate Division, 152 A.D.2d 365, 549 N.Y.S.2d 405, both held that the owner is protected under the exemption in Village Law § 1197-708(2)(b), and we agree. There should, accordingly, be an affirmance.

I

On April 29, 1975, the Town of Ramapo Planning Board accepted for filing petitioner's "average density" subdivision plat (*see*, Town Law § 281). As a condition of its "average density" approval, the town required that 12.105 acres of the 33.522 acres in the subdivision be irrevocably dedicated to it for parkland purposes. The subdivision was approved for development in two sections, the first to consist of 9 lots and the second of 22 lots.

On July 3, 1975, petitioner's predecessor dedicated the parkland and thereafter, on

effect at the time of the filing of the said subdivision plat or first section thereof, shall not, for the period of time prescribed in paragraph (b) of this subdivision, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

"(b) If at the time of the filing of the subdivision plat or first section thereof referred to in paragraph (a) of this subdivision there was in the village both a zoning board and a planning board vested with authority to approve subdivi-

September 24, 1975, the subdivision plat was filed. On June 29, 1982, the town approved a revised subdivision plat. This plat, filed on October 14, 1982, did not in any way modify the original layout of the lots, streets and other improvements.²

Between 1980 and early 1984, petitioner built seven homes on section one of the subdivision. No homes were constructed in section two which had been laid out for lots having widths of between 108 and 120 feet and areas complying with the 22,500 square-foot minimum requirement of the Town of Ramapo ordinance.

In 1984, when the Village of New Hempstead was incorporated, the territory of the town which encompassed petitioner's subdivision became part of the Village. On January 2, 1986, the Village amended the applicable zoning ordinance to increase the minimum area requirement for average density lots to 35,000 square feet and the minimum width requirement for such lots to 150 feet. Prior to this time, petitioner had installed various improvements on the subdivision including, on section two, drainage facilities, water and sewer lines, fire hydrants, curbs and curb cuts, and underground telephone and electric service. After the amendment to the ordinance—and with the Village's knowledge—petitioner installed a paved road on section two.

In June 1986, petitioner applied for a building permit to construct a house on lot D-10 in section two. The Village building inspector denied the permit because petitioner failed § 1120 to make certain public improvements to a county road adjoining the subdivision, and because the lot did not meet the amended, more restrictive Village

sion plats, then the exemption provided for in such paragraph shall apply for a period of three years after the filing of the subdivision plat or first section thereof." (Emphasis added.)

Provisions virtually identical to those in Village Law § 7-708(2) are contained in Town Law § 265-a and General City Law § 83-a.

2. It is not disputed that the three-year exemption period at issue began to run on the date the revised plat was filed (Oct. 14, 1982).

zoning requirements.³ With respect to this second reason, the inspector ruled that the exemption in Village Law § 7-708 did not apply inasmuch as petitioner had not sought a building permit during the three-year exemption period. Petitioner then commenced its first article 78 proceeding to review the denial of its permit. Supreme Court dismissed this proceeding for petitioner's failure to exhaust administrative remedies since it had not sought relief in an appeal to the Zoning Board of Appeals. Accordingly, petitioner appealed the building inspector's denial to the Zoning Board of Appeals and, as alternative relief, requested a variance.

When respondent Zoning Board of Appeals denied petitioner's application in all respects, it commenced the present article 78 proceeding. Supreme Court annulled respondent's determination and directed the Village inspector to issue the building permit for lot D-10 and the other lots in the subdivision "if, as, and when petitioner makes an application for same". The Appellate Division agreed with Supreme Court's conclusion that petitioner had acquired vested rights to complete the subdivision under the originally applicable area and dimension requirements, but modified by requiring petitioner to fulfill certain conditions in order to obtain the building permit.⁴

II

[1] This appeal turns on a question of statutory interpretation: the intended effect of the language in Village Law § 7-708(2) creating the exemption. Respondent Zoning Board of Appeals contends that the statute affords protection only for those lots in a filed subdivision which an owner has completed or for which it has actually obtained a building permit during the exemption period. Petitioner argues that the statute protects subdivision

lots in which an owner has acquired common-law ^{1,2}vested rights during the period. In construing section 7-708(2), as with any legislation, we first "look to the particular words for their meaning, both as they are used in the section and in their context as part of the entire statute." (*Price v. Price*, 69 N.Y.2d 8, 13; 511 N.Y.S.2d 219, 503 N.E.2d 684.) For if the statute is unambiguous and its meaning evident from the language, as respondent contends, we need look no further (see, *Sega v. State of New York*, 60 N.Y.2d 183, 190-191, 469 N.Y.S.2d 51, 456 N.E.2d 1174).

From the language of section 7-708(2), as it applies to the Village of New Hempstead, there is no question: (1) that its purpose is to create an exemption from the operation of amendments imposing stricter area and dimension requirements; and (2) that the period of the exemption is three years commencing on the date of the filing of the subdivision plat. But the statute contains no language which prescribes the conditions which must be satisfied for an owner to receive the benefit of the exemption. It does not specify whether as a prerequisite for claiming the exemption for a particular lot, the owner must, during the exemption period, have completed construction on the lot or obtained a building permit for such construction—or whether it is sufficient if the owner has taken sufficient steps toward completion of the subdivision under the existing, more liberal zoning requirements to have acquired vested rights in the remaining undeveloped lots. The only statutory mandate is that the stricter requirements of the amended ordinance "shall not * * * be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat" (Village Law § 7-708[2][a] [emphasis added]). Exactly what the lots are protected from—i.e., what is meant by the phrases "be applicable to" and "in any way affect"—is not

3. The other reason given for the denial of the permit—i.e., that petitioner failed to pay an inspection fee—is not at issue on this appeal.

4. Both Supreme Court and the Appellate Division also concluded that—if the new, more restrictive zoning requirements were held to be applicable despite the exemption period in Vil-

lage Law § 7-708(2)—the Zoning Board of Appeals lacked a rational basis for the denial of petitioner's request for a variance. In the light of our conclusion that petitioner was entitled to the benefit of the exemption provision, we do not reach the variance issue.

clear. It is necessary, therefore, to look beyond the words of the statute at the circumstances surrounding its adoption and to consider the policy reasons for enacting legislation in an area where common-law rules have long controlled (see, *Price v. Price*, *supra*, 69 N.Y.2d at 13-14, 511 N.Y.S.2d 219, 503 N.E.2d 684), being mindful, of course, that the "legislative intent is the great and controlling principle" (*id.*, at 14, 511 N.Y.S.2d 219, 503 N.E.2d 684; *People v. Ryan*, 274 N.Y. 149, 152, 8 N.E.2d 313).

Village Law § 7-708(2) and its counterpart, Town Law § 265-a, were enacted in 1960 (L.1960, chs. 1060, 1061). The Legislature adopted a similar measure for cities in 1961 (General City Law § 83-a, L.1961, ch. 275). Prior to these enactments, questions concerning the rights of owners of approved subdivisions to complete their subdivisions in accordance with the regulations existing at the time of their approval were governed¹² exclusively by the common law pertaining to vested rights.

[2] The New York rule, both before and after the exemption statutes, has been that where a more restrictive zoning ordinance is enacted, an owner will be permitted to complete a structure or a development which an amendment has rendered nonconforming only where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of the amendment (see, *People v. Miller*, 304 N.Y. 105, 107-109, 106 N.E.2d 34; *Matter of Putnam Armonk v. Town of Southeast*, 52 A.D.2d 10, 14-15, 382 N.Y.S.2d 538; 4 Rathkopf, *Zoning and Planning* § 50.03[3], at 50-25-50-28 [4th ed.]; 1 Anderson, *New York Zoning Law and Practice* § 6.18, at 229-234 [3d ed.]). The doctrine of vested rights has generally been described as an application of the constitutionally based common-law rule protecting nonconforming uses (see, *People v. Miller*, *supra*, 304 N.Y. at 107, 106 N.E.2d 34; 4 Rathkopf, *op. cit.*, at 50-13, n. 2). But the doctrine is also said to have been grounded on principles of equitable estoppel (see, *Matter of Pokoik v. Silsdorf*, 40 N.Y.2d 769, 773, and at 774, 390 N.Y.S.2d 49, 358 N.E.2d 874 [Breitel, Ch. J., dissenting]; 7

Rohan, *Zoning and Land Use Controls* § 52.08[4], at 52-78-52-80; 4 Rathkopf, *op. cit.*, § 50.04, at 50-41-50-42). Whether rooted in equity or the common law, the operation and effect of the vested rights doctrine is the same and it has been applied alike to a single building or a subdivision (see, *Matter of Putnam Armonk v. Town of Southeast*, 52 A.D.2d 10, 382 N.Y.S.2d 538, *supra*; *Elsinore Prop. Owners Assn. v. Morwand Homes*, 286 App.Div. 1105, 1106-1107, 146 N.Y.S.2d 78; *Ward v. City of New Rochelle*, 20 Misc.2d 122, 197 N.Y.S.2d 64, *affd.* 9 A.D.2d 911, 197 N.Y.S.2d 128, *affd.* 8 N.Y.2d 895, 204 N.Y.S.2d 144, 168 N.E.2d 821; 4 Rathkopf, *op. cit.*, § 50.03[3][d], at 50-39-50-41).

Under the vested rights doctrine as it applied to subdivisions (prior to the exemption statutes), nothing cut off the period during which a developer could acquire vested rights after initial approval. On the other hand, nothing prevented a municipality from subjecting the undeveloped lots in an approved subdivision to more stringent restrictions at any time after the plat was filed so long as vesting had not occurred. Protecting the owner depended entirely on the date of vesting relative to the effective date of the amended ordinance. If vesting occurred first, the owner was protected. It mattered not *when* the events occurred with respect to the initial date of plat approval, but only which came first.

The enactment of the statutory exemption provisions (Village Law § 7-708[2]; Town Law § 265-a[2]; General City Law § 83-a[2]) obviously supplied something which the decisional law of vested rights lacked: a specific period during which the developer could secure the right to complete the unfinished lots free from the requirements of the new, more restrictive ordinance and beyond which such right could not be secured. But the statutes did not define precisely what the developer must do during the period to obtain the protection of the exemption.

[3] Respondent Zoning Board of Appeals contends that, under the statute, in order to achieve freedom from the amended ordinance for any uncompleted lot, a

developer must have actually completed the lot or obtained a building permit for it. Under this construction, a developer which had done more than enough during the exemption period to acquire common-law vested rights for the remaining undeveloped lots in the subdivision, would be required, nevertheless, to comply with the amended ordinance for these lots. Such construction, if adopted would produce an extensive change in the law, and would deprive the developer of what, but for the effect of the statute, would be its right to achieve vesting during the exemption period under the common-law rule. It would, thus, contravene the established rule of construction that zoning legislation of the type in question which is "in derogation of the common law * * * must be strictly construed against the municipality which * * * seeks to enforce [it]" (*Matter of Allen v. Adami*, 39 N.Y.2d 275, 277, 383 N.Y.S.2d 565, 347 N.E.2d 890; see, *Matter of 440 E. 102nd St. Corp. v. Murdock*, 285 N.Y. 298, 304-305, 34 N.E.2d 329; 1 Anderson, New York Zoning Law and Practice § 17.01, at 740-743 [3d ed.]; see generally, McKinney's Cons.Laws of N.Y., Book 1, Statutes § 153, at 331-332 ["(t)he courts will not construe a statute as abolishing a common-law right in the absence of a clear intent on the part of the Legislature"]).

[4-7] Contrary to respondent Zoning Board's position, a commonsense analysis of the legislative purpose of Village Law § 7-708 and Town Law § 265-a in the light of the circumstances surrounding their original enactment (L.1960, chs. 1060, 1061) does not suggest that the legislation was intended to deprive a subdivision developer of its capacity to acquire vested rights in a subdivision during the exemption period. The legislative history shows that the enactment was the culmination of a successful legislative compromise between the views of the developers and the differing views of the municipalities and that representatives of both groups urged its adoption (see, *112* Mem. of Westchester County Village Officials Assn., Bill Jacket, L.1960, chs. 1060, 1061; Mem. of Office for Local Government, *id.*; Mem. of New York State Home Builder's Ass'n, *id.*; Mem. of Ameri-

can Institute of Planners, *id.*; Mem. in support of A 3834, *id.*). Indeed, Governor Rockefeller in his memorandum approving the legislation stated that the "purpose of these bills is to reconcile the interests of home builders and developers who have made financial commitments relying on existing zoning ordinances, and the interests of towns and villages in not being unduly restrained from upgrading zoning requirements" (1960 McKinney's Session Laws of N.Y., Messages of Governor, at 2064).

Petitioner's interpretation of the statute—that it was intended to permit a developer to gain vested rights during the exemption period—seems fully consistent with this legislative purpose of effecting a compromise in a statute which would fairly balance the conflicting interests of the developers and municipalities. Under petitioner's construction, each group gains something and gives up something. The developers gain the assurance of a definite period during which they can protect their subdivisions by securing vesting; they give up the possibility of protection under the statute after that period. The municipalities gain the authority to enforce an upgrading of their zoning requirements at any time after the exemption period and the assurance that the new requirements will bind any developer which has not by then achieved vesting; the municipalities give up their former unrestricted power to subject a subdivision to new requirements at any time before the owner has acquired vesting rights.

The view of the statute espoused by respondent Zoning Board, on the other hand—that a developer can derive no protection for the balance of its subdivision by achieving vesting during the exemption period—permits undeniably harsh results. Obviously, where a developer has completed a substantial portion of a subdivision, it could be faced with large losses and unanticipated additional cost if compelled to restructure its plans and dismantle and reconstruct subdivision improvements in order to complete the remaining lots. As has been observed, a rule of such stringency applying to subdivisions imposes a formid-

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Cite as 564 N.Y.S.2d 1007 (Cl.App. 1990)

able barrier to development (4 Rathkopf, *op. cit.*, § 50.05[3], at 50-73) and actually impedes rational land use planning (*id.*, at 50-72). Under established rules, we must presume that the Legislature could not have intended respondent's interpretation of the statute which ¹¹²⁵produces such unreasonable and potentially unjust consequences (*see, Ferres v. City of New Rochelle*, 68 N.Y.2d 446, 454, 510 N.Y.S.2d 57, 502 N.E.2d 972; *Matter of Petterson v. Daystrom Corp.*, 17 N.Y.2d 32, 38, 268 N.Y.S.2d 1, 215 N.E.2d 329; McKinney's, Cons.Laws of N.Y., Book 1, Statutes §§ 141, 143, 146, at 280-284, 286-290, 297-302).

We accordingly agree with the courts below that Village Law § 7-708(2) was intended to permit a developer to secure the right to complete a subdivision in accordance with the existing zoning requirements by manifesting a commitment to the execution of the subdivision plan through completing improvements and incurring expenditures in connection therewith, during the exemption period, sufficient to constitute vesting under common-law rules. Moreover, our review of the record concerning the work performed and expenditures made by petitioner confirms the conclusion of the Appellate Division that, as found by the Supreme Court, the substantial improvements and expenditures made during the three-year exemption period "conferred a vested right to obtain building permits in accordance with the provisions of the former zoning ordinance." (152 A.D.2d 365, 377, 549 N.Y.S.2d 405.)

The order of the Appellate Division should be affirmed,⁵ with costs.

WACHTLER, C.J., and SIMONS,
KAYE, ALEXANDER, TITONE and
BELLACOSA, JJ., concur.

Order affirmed, with costs.



5. We have considered respondent's remaining arguments and conclude that they provide no

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77 N.Y.2d 126

¹¹²⁶In the Matter of NEW YORK STATE
MEDICAL TRANSPORTERS ASSOCI-
ATION, INC., et al., Appellants,

v.

Cesar A. PERALES, as Commissioner of
the Department of Social Services of
the State of New York, Respondent.

Court of Appeals of New York.

Dec. 20, 1990.

Providers of transportation services filed Article 78 proceeding to require Department of Social Services to process retroactive request for approval of nonemergency transportation service for Medicaid patients. The Supreme Court, Nassau County, Lockman, J., directed commissioner to process request for retroactive approval. Commissioner appealed. The Supreme Court, Appellate Division, 553 N.Y. S.2d 790, held that Department had not ratified agent's adoption of policy that would allow "retroactive prior approval," and reversed. Providers appealed. The Court of Appeals, Kaye, J., held that: (1) Department was not estopped from adopting policy that required prior approval; (2) record did not support providers' claim that Department ratified actions of agents; and (3) even if record supported claim that Department allowed and condoned actions of agent allowing retroactive prior approval, Department could not ratify agent's act.

Affirmed.

Alexander, J., dissented and issued an opinion in which Simons, J., concurred.

1. Estoppel ←62.1

Estoppel cannot be invoked against governmental agency to prevent it from discharging its statutory duties.

basis for disturbing the Appellate Division's order.

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HUDSON VALLEY DEVELOPMENT GROUP OF NEW
WINDSOR, L.P.

TO

APPLIED BUILDING DEVELOPMENT OF NEW YORK,
N.W., T.I.C.

SECTION 65 BLOCK 1 LOT 16, 2, 34, 35

RECORD AND RETURN TO:
(Name and Address)

STEVEN TARSHIS ESQ
PO BOX 1479
NEWBURGH NY 12550

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PROPERTY LOCATION

2089 BLOOMING GROVE (TN)	4289 MONTGOMERY (TN)
2001 WASHINGTONVILLE (VLG)	4201 MAYBROOK (VLG)
2289 CHESTER (TN)	4203 MONTGOMERY (VLG)
2201 CHESTER (VLG)	4205 WALDEN (VLG)
2489 CORNWALL (TN)	4489 MOUNT HOPE (TN)
2401 CORNWALL (VLG)	4401 OTISVILLE (VLG)
2600 CRAWFORD (TN)	4600 NEWBURGH (TN)
2800 DEERPARK (TN)	<input checked="" type="checkbox"/> 4800 NEW WINDSOR (TN)
3089 GOSHEN (TN)	5089 TUXEDO (TN)
3001 GOSHEN (VLG)	5001 TUXEDO PARK (VLG)
3003 FLORIDA (VLG)	5200 WALLKILL (TN)
3005 CHESTER (VLG)	5489 WARWICK (TN)
3200 GREENVILLE (TN)	5401 FLORIDA (VLG)
3489 HAMPTONBURGH (TN)	5403 GREENWOOD LAKE (VLG)
3401 MAYBROOK (VLG)	5405 WARWICK (VLG)
3689 HIGHLANDS (TN)	5600 WAWAYANDA (TN)
3601 HIGHLAND FALLS (VLG)	5889 WOODBURY (TN)
3889 MINISINK (TN)	5801 HARRIMAN (VLG)
3801 UNIONVILLE (VLG)	
4089 MONROE (TN)	
4001 MONROE (VLG)	
4003 HARRIMAN (VLG)	
4005 KIRYAS JOEL (VLG)	

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PAYMENT TYPE: CHECK ☒
CASH ☐
CHARGE ☐
NO FEE ☐

CONSIDERATION \$ 2,030.00
TAX EXEMPT ☐

MORTGAGE AMT \$
DATE 10-29-99

MORTGAGE TYPE:

☐ (A) COMMERCIAL
☐ (B) 1 OR 2 FAMILY
☐ (C) UNDER \$10,000.
☐ (E) EXEMPT
☐ (F) 3 TO 6 UNITS
☐ (I) NAT.PERSON/CR.UNION
☐ (J) NAT.PER-CR.UN/ OR 2
☐ (K) CONDO

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**CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT
THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY**

THIS INDENTURE, made the 29th day of October, nineteen hundred and ninety nine

BETWEEN

HUDSON VALLEY DEVELOPMENT GROUP OF NEW WINDSOR, L.P., a New York Limited Partnership with an office at 9 Sylvan Way, Parsippany, New Jersey 07054, party of the first part, and

Doc
APPLIED BUILDING DEVELOPMENT OF NEW YORK, N.W., T.I.C., consisting of Applied Building Development of New York, Inc. and Windsor Karney Development, Inc., with an office at ~~330 West 58th Street, New York, New York 10019~~ 10 Vista Drive, ~~Chenka, N.Y. 10918~~
party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten and no/100 (\$10.00) dollars lawful money of the United States, and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of New Windsor, County of Orange and State of New York and more particularly described on Schedule "A" annexed hereto.

SAID premises are also known and shown as all of the lots (101) on a certain subdivision map entitled "Major Subdivision for Shannon Acres" prepared by Engineering and Technical Resources, Inc. (ENTEC) dated October 17, 1997, last revised September 21, 1999, and filed in the Orange County Clerk's office on November 1, 1999 as Map # 242-99.

SUBJECT TO grants, easements, right of way and terms and conditions of record and notes on filed map.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof;

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises;

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part the heirs or successors and assigns of the party of the second part forever.

SCHEDULE A

ALL that certain plot, piece or parcel of land situate, lying and being in the Town of New Windsor, County of Orange and State of New York being more particularly described as follows:

BEGINNING at a point in the westerly line of Riley Road where said line is intersected by the northerly line of Lands, now or formerly, of Martin, running thence on the following courses:

- 1). along said line South 77 Degrees 30' 23" West 201.39 feet to a point;
- 2). still along said lands, South 17 Degrees 31' 35" East 249.60 feet to a point;
- 3). along lands, now or formerly, of Garrison and Lands, now or formerly, of Lovett South 67 Degrees 40' 00" West 917.73 feet to a point;
- 4). along Lands, now or formerly, of Barger South 63 Degrees 24' 52" West 93.89 feet to a point;
- 5). still along said lands South 67 Degrees 35' 20" West 275.76 feet to a point;
- 6). still along said lands South 43 Degrees 57' 52" East 167.29 feet to a point;
- 7). still along said lands South 40 Degrees 11' 18" East 195.95 feet to a point;
- 8). still along said lands South 41 Degrees 05' 28 Degrees East 274.79 feet to a point;
- 9). still along said lands South 41 Degrees 48' 05" East 112.90 feet to a point;
- 10). along lands, now or formerly, of Sweeny South 18 Degrees 48' 12" West 496.22 feet to a point in the northerly line of Dean Hill Road;
- 11). along said line North 71 Degrees 30' 45" West 109.87 feet to a point;
- 12). still along said line North 75 Degrees 27' 34" West 207.08 feet to a point;
- 13). still along said line South 57 Degrees 28' 05" West 163.31 feet to a point;
- 14). still along said line South 85 Degrees 18' 54" West 107.84 feet to a point;
- 15). still along said line North 60 Degrees 37' 23" West 560.12 feet to a point;
- 16). along lands, now or formerly, of Werner North 23 Degrees 59' 04" East 340.76

SCHEDULE A (continued)

feet to a point;

17). still along said lands North 37 Degrees 18' 25" West 204.21 feet to a point;

18). along lands, now or formerly, of White North 65 Degrees 55' 04" East 73.81 feet to a point;

19). still along said lands North 34 Degrees 30' 24" West 1060.21 feet to a point;

20). along lands, now or formerly, of Maurice North 51 Degrees 43' 06" East 41.35 feet to a point;

21). still along said lands North 39 Degrees 22' 02" West 327.08 feet to a point;

22). still along said lands South 33 Degrees 38' 58" West 835.96 feet to a point in the northeasterly line of Dean Hill Road;

23). along said line North 39 Degrees 54' 08" West 109.62 feet to a point;

24). along lands, now or formerly, of City of Newburgh Water Supply North 26 Degrees 08' 39" East 255.77 feet to a point;

25). still along said line North 25 Degrees 19' 45" East 530.62 feet to a point;

26). still along said line North 26 Degrees 40' 39" East 396.79 feet to a point;

27). still along said lands and along lands, now or formerly, of Kartiganer South 84 Degrees 15' 40" East 737.16 feet to a point;

28). still along said lands South 84 Degrees 04' 20" East 624.93 feet to a point;

29). still along said lands South 81 Degrees 39' 01" East 240.89 to a point;

30). still along said lands South 83 Degrees 41' 02" East 14.79 feet to a point;

31). along lands, now or formerly, of Nemeth South 15 Degrees 24' 46" East 200.41 feet to a point;

32). still along said lands North 67 Degrees 18' 24" East 163.06 feet to a point;

33). still along said land South 15 Degrees 24' 46" East 301.13 feet to a point;

34). still along said lands and along lands, now or formerly, of Kennedy and lands, now or formerly, of Nemeth North 72 Degrees 13' 43" East 810.00 feet to a point in the westerly line of Riley Road;

35). along said line South 14 Degrees 00' 43" East 223.60 feet to the point or place of beginning.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby and said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the

right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Hudson Valley Development Group of New Windsor, L.P.

By: Mountain Funding, Inc., General Partner

By: Peter Fioretti
Peter Fioretti, President

State of New Jersey)

) ss.:

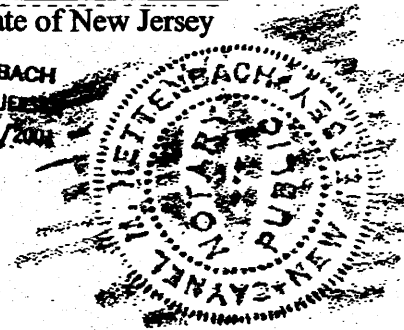
County of Morris)

On October 29, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Peter Fioretti, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Raynel M. Hettenbach
Notary Public, State of New Jersey

RAYNEL M. HETTENBACH
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 7/31/2004

Seal



::ODMA\WORLD\W:\1733\80\TP6561.WPD



CERTIFICATE OF TITLE

First American Title Insurance Company of New York

Title No. 733-0-00464
981167

First American Title Insurance Company of New York ("the Company") certifies to

that an examination of title to the premises described in Schedule A has been made in accordance with its usual procedure and agrees to issue a title insurance policy authorized by the Insurance Department of the State of New York, in the amount and on the terms set forth herein, and the marketability thereof, in the premises described in Schedule A, after the closing of the transaction in conformance with the requirements and procedures set forth by the Company and after the payment of the premium and fees associated herewith, to protect the insured against all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (b) any question or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of the policy.

This Agreement to insure shall terminate (1) if the prospective insured, his or her attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company; or (2) upon the issuance of title insurance in accordance herewith. In the event that this Certificate is endorsed and redated by an authorized representative of the Company after the closing of the transaction and payment of the premium and fees associated herewith, such "redated" Certificate shall serve as evidence of the title insurance issued until such time as a policy of title insurance is delivered to the insured. Any claim made under the redated Certificate shall be restricted to the conditions, stipulations and exclusions from coverage of the standard form of title insurance policy issued by the Company.

COUNTERSIGNED

Donald W. Miro
AUTHORIZED SIGNATURE



FIRST AMERICAN TITLE INSURANCE COMPANY
OF NEW YORK

BY:

James M. DiStefano
PRESIDENT

First American Title Insurance Company of New York

THE ALTA OWNER'S POLICY (10/17/92), WITH NEW YORK ENDORSEMENT (9/1/93), CONTAINS THE FOLLOWING INSURANCE COVERAGE AND EXCLUSIONS FROM COVERAGE.

OWNER'S COVERAGE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, First American Title Insurance Company of New York, a New York Corporation, herein called the Company, insures, as Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

EXCLUSIONS FROM OWNER'S COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of operation of federal bankruptcy, state insolvency similar creditors' rights laws that is based on: (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure (a) to timely record the instrument of transfer; or (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SPECIAL NEW YORK OWNER'S PROVISIONS

If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or encumbrances, except real estate taxes, assessments, water charges and sewer rents.

FIRST AMERICAN TITLE INSURANCE COMPANY

Proposed Insured:

Title No. 981167 (733-0-00464)

Effective Date: July 16, 1999

~~Applied Building Development of New York, J.V.~~ ~~Refile: Nov 3, 1999~~

Applied Building Development of New York, N.W., T.I.C. Consisting of
Applied Building Development of New York, Inc. and Windsor Karney Development, Inc.
Mortgagee:

Amount of Insurance

Fee

\$2,020,000.00

Mortgage

THIS COMPANY CERTIFIES that a good and marketable title to premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

**HUDSON VALLEY DEVELOPMENT GROUP OF NEW WINDSOR, L.P.
A NEW YORK LIMITED PARTNERSHIP,**

having acquired title by the following Deeds:

1. Deed from the County of Orange, dated September 26, 1994 recorded September 29, 1994 in Liber 4116 cp. 236, and
2. Deed from the County of Orange, dated September 26, 1994 recorded September 29, 1994 in Liber 4116 cp. 238, and
3. Deed from the County of Orange, dated September 26, 1994 recorded September 29, 1994 in Liber 4116 cp. 240.

See Premises Information on next page

Insured: Applied Building Development of New York, N.W., T.I.C.
Consisting of Applied Building Development of New York, Inc.
And Windsor Karney Development, Inc.

By

Deed date Nov. 3, 1999. —

FIRST AMERICAN TITLE INSURANCE COMPANY

Premises described in Schedule "A" are known as:

Address: New Windsor, New York
County: Orange **City:** ----
District: ---- **Town:** New Windsor
Section: 65
Block: 1
Lot: 16.2, 32 & 35.22

For any questions about this title report please contact: Donald W. Mirro, Esq.
Sandra

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

SCHEDULE A

*Inmate
D.W.M.*

ALL that certain plot, piece or parcel of land situate, lying and being in the Town of New Windsor, County of Orange and State of New York being more particularly described as follows:

BEGINNING at a point in the westerly line of Riley Road where said line is intersected by the northerly line of Lands, now or formerly, of Martin, running thence on the following courses:

- 1). along said line South 77 Degrees 30' 23" West 201.39 feet to a point;
- 2). still along said lands, South 17 Degrees 31' 35" East 249.60 feet to a point;
- 3). along lands, now or formerly, of Garrison and Lands, now or formerly, of Lovett South 67 Degrees 40' 00" West 917.73 feet to a point;
- 4). along Lands, now or formerly, of Barger South 63 Degrees 24' 52" West 93.89 feet to a point;
- 5). still along said lands South 67 Degrees 35' 20" West 275.76 feet to a point;
- 6). still along said lands South 43 Degrees 57' 52" East 167.29 feet to a point;
- 7). still along said lands South 40 Degrees 11' 18" East 195.95 feet to a point;
- 8). still along said lands South 41 Degrees 05' 28 Degrees East 274.79 feet to a point;
- 9). still along said lands South 41 Degrees 48' 05" East 112.90 feet to a point;
- 10). along lands, now or formerly, of Sweeny South 18 Degrees 48' 12" West 496.22 feet to a point in the northerly line of Dean Hill Road;
- 11). along said line North 71 Degrees 30' 45" West 109.87 feet to a point;
- 12). still along said line North 75 Degrees 27' 34" West 207.08 feet to a point;
- 13). still along said line South 57 Degrees 28' 05" West 163.31 feet to a point;
- 14). still along said line South 85 Degrees 18' 54" West 107.84 feet to a point;
- 15). still along said line North 60 Degrees 37' 23" West 560.12 feet to a point;
- 16). along lands, now or formerly, of Werner North 23 Degrees 59' 04" East 340.76

- continued on next page -

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

SCHEDULE A (continued)

feet to a point;

- 17). still along said lands North 37 Degrees 18' 25" West 204.21 feet to a point;
- 18). along lands, now or formerly, of White North 65 Degrees 55' 04" East 73.81 feet to a point;
- 19). still along said lands North 34 Degrees 30' 24" West 1060.21 feet to a point;
- 20). along lands, now or formerly, of Maurice North 51 Degrees 43' 06" East 41.35 feet to a point;
- 21). still along said lands North 39 Degrees 22' 02" West 327.08 feet to a point;
- 22). still along said lands South 33 Degrees 38' 58" West 835.06 feet to a point in the northeasterly line of Dean Hill Road;
- 23). along said line North 39 Degrees 54' 08" West 109.62 feet to a point;
- 24). along lands, now or formerly, of City of Newburgh Water Supply North 26 Degrees 08' 39" East 255.77 feet to a point;
- 25). still along said line North 25 Degrees 19' 45" East 530.62 feet to a point;
- 26). still along said line North 26 Degrees 40' 39" East 396.79 feet to a point;
- 27). still along said lands and along lands, now or formerly, of Kartiganer South 84 Degrees 15' 40" East 737.16 feet to a point;
- 28). still along said lands South 84 Degrees 04' 20" East 624.93 feet to a point;
- 29). still along said lands South 81 Degrees 39' 01" East 240.89 to a point;
- 30). still along said lands South 83 Degrees 41' 02" East 14.79 feet to a point;
- 31). along lands, now or formerly, of Nemeth South 15 Degrees 24' 46" East 200.41 feet to a point;
- 32). still along said lands North 67 Degrees 18' 24" East 163.06 feet to a point;
- 33). still along said land South 15 Degrees 24' 46" East 301.13 feet to a point;
- 34). still along said lands and along lands, now or formerly, of Kennedy and lands,

- continued on next page -

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

SCHEDULE A (continued)

now or formerly, of Nemeth North 72 Degrees 13' 43" East 810.00 feet to a point in the westerly line of Riley Road;

35). along said line South 14 Degrees 00' 43" East 223.60 feet to the point or place of beginning.

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

SCHEDULE B

Hereinafter set forth are additional matters which will appear in our policy as exceptions from coverage unless disposed of to our satisfaction prior to the closing or delivery of policy.

DISPOSITION

1. Proof is required to show that have not been known by any other names in the 10 years last past. If those persons have been known by another name, all searches must be amended and run against such names and title is subject to returns, if any on such amended searches.
2. Rights of tenants or persons in possession, if any.
3. Our policy does not insure against taxes, water rates, assessments and other matters relating to taxes which have not become a lien up to the date of the policy or installments due after the date of the policy. Neither our tax search nor our policy covers any part of streets on which the premises abut.
4. Subject to any state of facts an accurate survey or personal inspection may reveal.
5. The exact distances, dimensions and locations of boundary lines of the premises herein described cannot be guaranteed without a survey acceptable and approved by the Law Department of this Company.
6. Rights, if any, in favor of any electric light or telephone company to maintain guy wires extending from said premises to poles located on the roads on which the premises abut, but policy will insure, however, that there are no such agreements of record in connection therewith, except as may be shown herein.
7. Underground encroachments and easements, if any, including pipes and drains, and such rights as may exist for entry upon said premises to maintain and repair the same, but policy will insure, however, that there are no such easements of record in connection therewith, except as may be shown herein.
8. No title is insured to that portion of the premises lying in the bed of any street or roadway.

omit
run

Exact
run

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

SCHEDULE B (continued)

DISPOSITION

9. The mortgages reported herein must be properly disposed of at or prior to closing.

omit

NOTE: If the mortgage to be satisfied is a Home Equity Loan, the Title Company requires the following:

- (A) Proof that the Lender has received ten (10) days written Notice prior to the date of closing that the account has been frozen;
(B) All unused checks must be returned at the date of closing to the lender.

10. Grant in Liber 762 cp. 287, Liber 762 cp. 277, Liber 681 cp. 514 and Liber 872 cp. 543. *gas & electric - phone line*

11. Subject to Terms and Conditions as set forth in Liber 1736 page 316. *NYC easement - established by deed*

Except

12. Subject to Right-of-Way in Liber 1774 page 414 (Section 65 Block 1 Lot 16.2). *private R/W*

13. Access and Utility Easement in Liber 4530 page 207. *NYNEX easement - common facility adj. prop.*

14. Access and Utility Easement in Liber 4679 page 91. *T/AN easement for water pump station*

omit

15. HUDSON VALLEY DEVELOPMENT GROUP OF NEW YORK, L.P., A New York Limited Partnership, a limited partnership, is the certified owner of record. A copy of the partnership agreement must be submitted along with proof of compliance with the publication requirements, if any. After review of said documents the Company reserves the right to raise such additional exceptions as are deemed necessary.

16. Proof must be submitted that all the partners, both general and limited, have consented to the proposed conveyance.

17. The subject premises is presently assessed as a vacant land parcel. Said assessment will increase upon improvements. Should this company be asked to escrow real property taxes, the escrow to be held will be computed upon the anticipated full assessment amount.

Except

18. NOTE FOR INFORMATION: There is no Joint Venture Entity in New York State. A Joint Venture is not a Partnership. Joint Venturers acquire title as Tenants in Common and must be so treated.

Frank

SUBJECT TO Set. Lines, Notes and Conditions as shown on Filed Map No. 242.99, known as Shamokin Area, to be known as "Forest Glen",
- continued on next page -

filed in the Orange County Clerk's Office at 11/1/99.

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

SCHEDULE B (continued)

DISPOSITION

19. Pursuant to Chapters 924 and 925 of the Laws of 1985 and regulations of the State Tax Commission promulgated thereunder, each deed submitted for recording must recite either that
- (i) the real property is not encumbered by a credit line mortgage;
 - (ii) the premises is being transferred subject to a credit line mortgage to a relative of the transferor by blood, marriage or adoption (specifying the facts of each case); or
 - (iii) a bank or certified check has been drawn in payment of the balance due on the credit line mortgage for transmission to the credit line mortgage outstanding will be satisfied of record in due course. Otherwise, the deed will not be accepted for recording. An affidavit of the transferor, or the transferor's attorney, will be accepted in lieu of a recital in the deed.
20. Attention is called to the fact that any instrument covering premises in the State of New York must be endorsed with the Section, Block and Lot of the Tax Map of the City or Town in which the premises are situated before it will be acceptable for recording.
21. NOTE: Certified record owners have been searched for judgments and Federal Tax Liens. None found of record.
Proposed purchasers have been searched for judgments and Federal Tax liens. None found of record.
22. NOTE: Effective July 1, 1994, the New York State Board of Equalization and Assessment has mandated that the revised form of Real Property Transfer Report (EA-5217) must accompany all deeds tendered for recording. The old form will not be accepted.
23. NOTE: The County Clerks require that all documents submitted for recording must be signed in black ink.
24. NOTE: This Company has recently suffered considerable delay and expense in recording instruments due to the rejection of uncertified checks by various County Clerks. By reason thereof, any check made payable to a County Clerk (other than the Orange County Clerk which has a limit of \$500.00) in excess of \$1000.00 must be certified funds.

omit
JMS

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

MORTGAGES

19.50

(1)

Mortgagor:

HUDSON VALLEY DEVELOPMENT
GROUP OF NEW WINDSOR, L.P.

Mortgagee:

ASSOCIATED DEVELOPERS
FUNDING, INC.

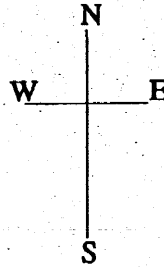
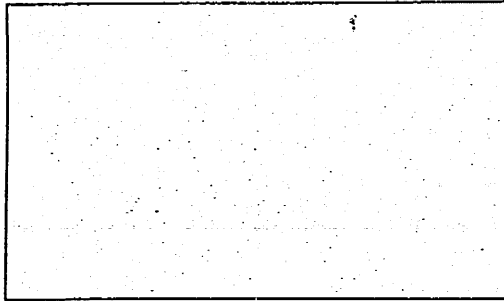
Amount: \$600,000.00
Dated: October 31, 1994
Recorded: November 18, 1994
Liber: 5280 mp 125

ant

8.010.0

This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.

TAX SCHEDULE



The tax search made herein covers only the premises shown on above diagram, and no search is made against any part of the street on which said premises abut.

County Orange
Section 65
Block 1
Lot (s) 16.2

City
Town New Windsor
Village
School District Cornwall

Land \$101,900.00 Total \$101,900.00

Assessed Owner Hudson Valley Development of New Windsor, Inc.

Disposition

RETURNS

1999 State, County and Town \$14,482.90 (RST \$7,469.46) + penalties
Amount Due by July 31, 1999: \$16,121.47

1998/99 School \$6,980.80 + penalties = \$7,469.46 RELEVIED

See attached printout from Commissioner of Finance.

Section 65 Block 1 Lot 32

Assessed Value: Land and Full: \$100.00

School District: Newburgh

1999 State, County and Town: \$55.20 Amount due \$63.44 by July 31, 1999.

1998/99 School - \$6.41 + penalties = \$7.26 Due by July 31, 1999

Total Amount due for this lot \$70.70

See attached printout from Commissioner of Finance.

Section 65 Block 1 Lot 35.22

Water meter and sewer rental charges accruing since the date of the last reading and building purpose or unfixed water frontage charges subsequently entered.

- continued on next page -

EXCEPT

*mg
Paid
dum*

*mt
Paid
dum*

FIRST AMERICAN TITLE INSURANCE COMPANY

Title No. 981167 (733-O-00464)

TAX SCHEDULE (continued)

Assessed Value: Land: \$22,400.00 Full: \$22,400.00

School District: Newburgh

1999 State, County and Town \$1,563.49 + penalties and interest.
Amount due by July 31, 1999: \$1,742.16

1998/99 School \$1488.61 + penalties and interest = \$1,625.56

Total amount due for this lot by July 31, 1999: \$3,367.72

See attached printout from Commissioner of Finance.

amt
paid
on



TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NY 12553
(845) 563-4615 (MYRA MASON)



ZONING BOARD PROCEDURES

**PLEASE READ PAGE ONE AND TWO OF THIS PACKAGE AND SIGN PAGE TWO
IT EXPLAINS THE PROCEDURE TO BE FOLLOWED FOR YOUR APPLICATION.**

PLEASE COMPLETE THE ATTACHED APPLICATION FORMS WHERE IT APPLIES TO YOUR SITUATION AND RETURN TO MYRA MASON (845-563-4615) AT THE ZONING BOARD OFFICE (LOCATED IN THE PLANNING BOARD & ENGINEERING OFFICE IN TOWN HALL) WITH THREE CHECKS MADE PAYABLE TO "THE TOWN OF NEW WINDSOR" AS FOLLOWS:

RESIDENTIAL: (Three Separate Checks Please)

APPLICATION FEE:	\$ 50.00
*ESCROW:	\$300.00
** <u>DEPOSIT</u> FOR PUBLIC HEARING LIST:	\$ 25.00

MULTI-FAMILY: (Three Separate Checks Please)

APPLICATION FEE:	\$150.00
*ESCROW:	\$500.00
** <u>DEPOSIT</u> FOR PUBLIC HEARING LIST:	\$ 25.00

COMMERCIAL: (Three Separate Checks Please)

APPLICATION FEE:	\$150.00
*ESCROW:	\$500.00
** <u>DEPOSIT</u> FOR PUBLIC HEARING LIST:	\$ 25.00

INTERPRETATION: (Three Separate Checks Please)

APPLICATION FEE:	\$150.00
*ESCROW:	\$500.00
** <u>DEPOSIT</u> FOR PUBLIC HEARING LIST:	\$ 25.00

YOU WILL THEN BE SCHEDULED FOR THE NEXT AVAILABLE AGENDA FOR YOUR "PRELIMINARY MEETING".

*

ESCROW

IS TO COVER OUTSIDE PROFESSIONAL FEES SUCH AS ZBA ATTORNEY FEE, MINUTES OF YOUR PORTION OF THE MEETING, ETC. THE BALANCE WILL BE RETURNED TO YOU UPON CLOSING FILE.

THE APPLICANT WILL BE BILLED DIRECTLY FOR THE PUBLIC HEARING ADVERTISEMENT IN THE "SENTINEL NEWSPAPER"

**

LIST OF PROPERTY OWNERS
WITHIN 500 FT. RADIUS OF
PROPERTY IN QUESTION:

APPROXIMATE COST FOR
PUBLIC HEARING LIST:

1-10 NAMES	25.00
11-20 NAMES	35.00
21-30 NAMES	45.00
31-40 NAMES	55.00
41-50 NAMES	65.00
51-60 NAMES	75.00
61-70 NAMES	85.00
71-80 NAMES	95.00
81-90 NAMES	105.00
91-100 NAMES	115.00

ANYTHING OVER 100 NAMES
IS \$1.00 EA. ADDITIONAL
NAME

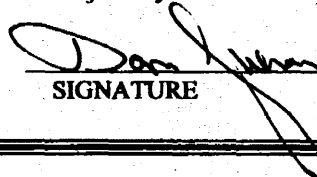
1. WHEN THE ASSESSOR'S OFFICE NOTIFIES YOU THAT YOUR LIST IS READY, YOU MUST COME IN AND PAY THE BALANCE DUE FOR THE LIST. (THIS WILL BE PREPARED ON LABELS FOR YOUR CONVENIENCE).
2. PREPARE AN ENVELOPE (self-sealing envelopes are much appreciated) FOR EACH LABEL WITH YOUR RETURN ADDRESS AND A REGULAR \$.37 STAMP. BRING THE PREPARED ENVELOPES AND A COPY OF THE LIST TO THE ZONING BOARD SECRETARY FOR MAILING. YOUR PUBLIC HEARING DATE WILL BE SCHEDULED AT THIS TIME.

NOTE:

IF IT IS EASIER FOR YOU, YOU CAN BRING THE ENVELOPES WITH YOU WHEN YOU PICK UP AND PAY FOR YOUR LIST. YOU CAN PUT THE LABELS ON AT THAT TIME AND BRING THEM TO THE ZBA OFFICE FOR COMPLETION.

**** MUST READ AND SIGN ****

I UNDERSTAND THAT I WILL BE BILLED DIRECTLY FOR MY "LEGAL NOTICE" TO BE PUBLISHED IN THE SENTINEL NEWSPAPER FOR MY PUBLIC HEARING....(this charge is not deducted from your escrow posted).


SIGNATURE

11/22/04
DATE

NOTE:

THE ZBA MEETS ON THE 2ND AND 4TH MONDAY OF EACH MONTH UNLESS A HOLIDAY FALLS ON THAT DATE.

PAGE 2

COMPLETE THIS PAGE ☐



**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS**



APPLICATION FOR VARIANCE

11/22/04
Date

Application Type: Use Variance ☐ Area Variance ☐
Sign Variance ☐ Interpretation ☒

I. Owner Information:

APPLIED BUILDING DEV OF NY NWTIC Phone Number: (845) 567 6668
(Name) Fax Number: (845) 567 7707
1011 ROLLING RIDGE, NEW WINDSOR NY 12553
(Address)

II. Applicant:

APPLIED BUILDING DEV OF NY NWTIC Phone Number: (845) 567 6668
(Name) Fax Number: ()
1011 ROLLING RIDGE NEW WINDSOR NY 12553
(Address)

III. Forwarding Address, if any, for return of escrow: Phone Number: ()
Same as above Fax Number: ()
(Name)

(Address)

Attorneys

IV. Contractor/Engineer/Architect/Surveyor/: Phone Number (845) 565-1100
Fax Number: (845) 565-1999
DRAKE, SOMMERS, LOEB, TARSHIS, CATANIA & LIBERTH, PLLC
(Name)
ONE CORWIN COURT, NEWBURGH, NEW YORK 12550
(Address)

V. Property Information:

Zone: R-3 Property Address in Question: 1039 ROLLING RIDGE
Lot Size: 22,154 SQ FT Tax Map Number: Section 89 Block 2 Lot 8
a. What other zones lie within 500 feet? R-3 (21,780 SQ FT LOTS)
b. Is pending sale or lease subject to ZBA approval of this Application? YES
c. When was property purchased by present owner? 11/3/99
d. Has property been subdivided previously? YES If so, When: 10/29/99
e. Has an Order to Remedy Violation been issued against the property by the
Building/Zoning/Fire Inspector? NO
f. Is there any outside storage at the property now or is any proposed? NO

******PLEASE NOTE:*******

**THIS APPLICATION, IF NOT FINALIZED, EXPIRES ONE YEAR FROM THE DATE OF
SUBMITTAL.**

COMPLETE THIS PAGE ☐

**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS**

APPLICATION FOR VARIANCE - continued

VIII. AREA VARIANCE: (This information will be on your Building Department Denial form you receive)

Area Variance requested from New Windsor Zoning Local Law,

Provided for informational purposes re: interpretation

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area	80,000 sq ft	22,154 sq ft	57,846 sq ft
Min. Lot Width	175 ft	100.7	74.3
Reqd. Front Yd.	45 ft	35	10
Reqd. Side Yd.	40 ft	15	25
TOTAL SIDE Reqd. Rear Yd.	80 ft	30	50
Reqd. St Front*			
Max. Bldg. Hgt.			
Min. Floor Area*			
Dev. Coverage*			
Floor Area Ration**			
Parking Area			

*Residential Districts Only

**Non-Residential Districts Only

PLEASE NOTE:

THIS APPLICATION, IF NOT FINALIZED, EXPIRES ONE YEAR FROM THE DATE OF SUBMITTAL.

COMPLETE THIS PAGE ☐

**OWN OF NEW WINDSOR
ZONING BOARD OF APPEALS**

APPLICATION FOR VARIANCE - continued

X. SIGN VARIANCE: N/A

- (a) Variance requested from New Windsor Zoning Local Law,
Section _____, Supplementary Sign Regulations

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign #1			
Sign #2			
Sign #3			
Sign #4			

- (b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or oversized signs.

- (c) What is total area in square feet of all signs on premises including signs on windows, face of building and freestanding signs _____?

XI. INTERPRETATION:

- (a) Interpretation requested of New Windsor Zoning Local Law,
Section 300-75 _____

- (b) Describe in detail the proposal before the Board:

See attached sheet

PLEASE NOTE:

THIS APPLICATION, IF NOT FINALIZED, EXPIRES ONE YEAR FROM THE DATE OF SUBMITTAL.

XII. ADDITIONAL COMMENTS:

- (a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning Local Law is fostered. (Trees, landscaped, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)
-
-

XIII. ATTACHMENTS REQUIRED:

- ☒ Copy of contract of sale, lease or franchise agreement. Copy of deed and title policy.
- ☒ Copy of site plan or survey (if available) showing the size and location of the lot, buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
- n/a ☐ Copies of signs with dimensions and location.
- ☒ Three checks: **(each payable to the TOWN OF NEW WINDSOR)**
- ☒ One in the amount of \$ 300.00 or 500.00 (escrow)
- ☒ One in the amount of \$ 50.00 or 150.00 (application fee)
- ☒ One in the amount of \$ 25.00 (Public Hearing List Deposit)
- ☒ Photographs of existing premises from several angles. **(IF SUBMITTING DIGITAL PHOTOS PRINTED FROM COMPUTER – PLEASE SUBMIT FOUR (4) SETS OF THE PHOTOS.)**

XIV. AFFIDAVIT.

STATE OF NEW YORK)

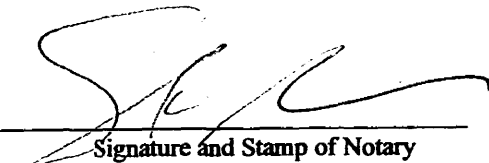
) SS.:

COUNTY OF ORANGE)

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/her information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

Sworn to before me this:

27th day of March 2007


Signature and Stamp of Notary


Owner's Signature (Notarized)

DAN GUERIN
Owner's Name (Please Print)

Applicant's Signature (If not Owner)

PLEASE NOTE: J. GABA

Notary Public, State of New York

Notary No. 02314975378

Qualified in Orange County

Commission Expires 12/26/2007

THIS APPLICATION IS NOT FINALIZED, EXPIRES ONE YEAR FROM THE DATE OF

SUBMITTAL

COMPLETE THIS PAGE ☐

APPLICANT/OWNER PROXY STATEMENT
(for professional representation)

for submittal to the:
TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS

Applied Building Dev of NY NWTIC, deposes and says that he resides
(OWNER)
at 1011 Rolling Ridge, New Windsor, NY 12553 in the County of Orange
(OWNER'S ADDRESS)
and State of New York and that he is the owner of property tax map
(Sec. 89 Block 2 Lot 8)
designation number (Sec. Block Lot) which is the premises described in
the foregoing application and that he authorizes:

(Applicant Name & Address, if different from owner)

Drake, Sommers, Loeb, Tarshis, Catania & Liberth, PLLC, One Corwin Court, Newburgh, NY 12550
(Name & Address of Professional Representative of Owner and/or Applicant)

to make the foregoing application as described therein.

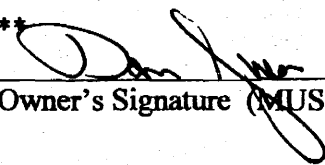
Date: _____

Sworn to before me this:

2nd day of March 2007

STEPHEN J. GABA
Notary Public, State of New York
No. 12544-111-76
Qualified in Orange County
Commission Expires 12/26/20 07

Signature and Stamp of Notary

**

Owner's Signature (MUST BE NOTARIZED)

Applicant's Signature (If different than owner)

Representative's Signature

THIS FORM IS TO BE COMPLETED ONLY IF SOMEONE OTHER THAN THE PROPERTY OWNER WILL BE APPEARING AS REPRESENTATION OF THE OWNER AT THE ZBA MEETINGS.

**** PLEASE NOTE:**

ONLY OWNER'S SIGNATURE MUST BE NOTARIZED.

COMPLETE THIS PAGE ☐

EXPLANATION OF INTERPRETATION SOUGHT

(A.) The subject property:

Applied Building Development of NY NWTIC (hereinafter "ABD") is the owner of approximately 79.4 acres of real property located in New Windsor, New York. The said property is located in an R-3 zoning district.

On or about October 29, 1999, the Planning Board of New Windsor granted final subdivision approval for creation of a 101 lot residential subdivision on the property. At that time, all lots within the subdivision met or exceeded the bulk requirements of the Town's Zoning Code. The approved final subdivision plat was filed with the County Clerk on or about November 1, 1999.

Immediately thereafter, a performance bond in the \$3,640,330 was posted in regard to the road improvements for the subdivision, drainage and other infrastructure improvements. Over the course of the next two years, internal roadways were constructed and water and sewer lines were laid. A lighting district was formed, and improvements were made for providing electric, gas and other utilities to the new homes. By the summer of 2001, "phase one" of the subdivision was essentially complete and the performance bond was reduced to \$1,742,880.

From summer of 2001 onward construction of "phase two" of the subdivision went forward. Construction of internal roadways continued, more water and sewer lines were laid, and improvements for utilities were expanded to the entire property. Moreover, extensive retention ponds and a storm water drainage system were constructed to serve the subdivision. By summer of 2002, the

infrastructure for phase two was essentially complete and the performance bond was accordingly reduced to \$466,184.

As is reflected in the amounts of the performance bonds, millions of dollars have been expended in making the aforesaid infrastructure improvements of roadways, water and sewer lines, a drainage system and utilities. These improvements were made to serve all of the lots in the subdivision in contemplation of construction of homes on the approved lots in compliance with the provisions of the filed final subdivision plat.

(B) The Building Inspector's Decision:

At present, with exception of a few lots, the entire subdivision is built out with residential homes. One of the few lots that has not yet been built upon is located at 1039 Rolling Ridge Road (Tax Lot #89-2-8).

ABD has applied for a building permit to construct a single family home on the said lot. By Notice of Disapproval dated November 9, 2004, the Town Building Inspector denied ABD's application on the grounds that the lot does not meet the current bulk requirements of the Town Code. Particularly, the present version of the Zoning Code requires a lot area of 80,000 square feet, a lot width of 175 feet, a front yard of 45 feet, a single side yard of 40 feet and a total side yard 80 feet, whereas the lot's area is 22,154 square feet, its width is 35 feet, its proposed front yard is 35 feet and its proposed side yard is 15 single/30 total.

(C) ABD's Appeal To The ZBA For An Interpretation:

When substantial improvements are made for development of a subdivision (i.e., streets, water lines, sewer lines, etc.), a vested right exists to develop the lots within the subdivision under the zoning applicable to the subdivision property at the time of approval. Ellington Construction Corp., v. ZBA of Incorporated Village of New Hempstead, 77 N.Y.2d 114, 566 N.E.2d 128, 564 N.Y.S.2d 1001 (1990). If the zoning is changed thereafter, the lots in the subdivision are unaffected. Id. The lots are considered legal conforming lots notwithstanding that they do not comply with the present provisions of the zoning code. Id.

Town Law §265-a provides that a subdivision which has been approved and filed is exempt from zoning changes for a period of three years. The statute was enacted to provide subdividers with a "grace period" during which they could make the improvements necessary to secure a vested right. Ellington Construction Corp., v. ZBA of Incorporated Village of New Hempstead, supra. If a subdivider fails to make substantial improvements within the three-year grace period provided by Town Law §265-a, his subdivision is vulnerable to zoning changes and he will need to obtain variances to develop his lots if the zoning is changed. Piliero v. Hitchcock, 211 A.D.2d 797, 621 N.Y.S.2d 385 (2d Dept. 1995).

Here, ABD obtained final subdivision approval in November of 1999. In the three years that followed (i.e., the "grace period" allowed under Town Law §265-a), ABD made substantial improvements

costing millions of dollars for development of its entire subdivision, such as construction of streets, water lines, sewer lines, utilities, etc. Accordingly, ABD has obtained a vested right to develop the lots within the subdivision under the zoning applicable to the subdivision at the time of approval.

Therefore, the ZBA should issue an interpretation finding that that ABD has obtained a vested right to develop its property under its approved subdivision plat and should reverse the Building Inspector's denial of ABD's application for a building permit.

It is true that Town Code §300-75 provides in effect that approved subdivision lots are grandfathered from zoning changes as long as a building permit is obtained for them within three years. However, Code §300-75 merely gives a developer a means of securing a vested right to build under applicable zoning (i.e., by obtaining a building permit) in addition to the recognized means of obtaining a vested right under state-law by making substantial improvements. These Code provisions in no way decrease a developer's ability to obtain a vested right to "build out" a subdivision in accordance with an approved plat by making substantial improvements to the property.



BULK REQUIREMENTS	REQUIRED	PROPOSED
MIN LOT AREA (S.F.)	21,780	21,780
MIN LOT WIDTH (FT.)	100	100
MIN LOT FRONTAGE (FT.)	60	60
MIN FRONT YARD (FT.)	35	35
MIN REAR YARD (FT.)	40	40
MIN SIDE YARD (MINIMUM) (FT.)	15/50	15/50
MAX BUILD HEIGHT (FT.)	35	35
MIN LIVABLE FLOOR AREA (S.F.)	1,000	>1,000
MAX DEVELOPMENT COVERAGE	20%	20%

LOT #	MIN LOT AREA (S.F.)	MIN LOT WIDTH	MIN LOT FRONTAGE
1	51,546	366.60	611.94
2	21,190	133.38	133.38
3	21,528	137.14	139.82
4	22,665	222.88	199.42
5	31,048	123.71	111.77
6	36,879	142.67	299.44
7	22,467	131.67	265.66
8	28,444	168.80	168.80
9	34,570	115.39	126.87
10	22,000	100.00	100.00
11	22,000	100.00	100.00
12	22,000	100.00	100.00
13	22,000	100.00	100.00
14	22,160	100.73	100.73
15	21,530	100.00	100.00
16	26,236	101.72	92.80
17	21,851	100.00	87.72
18	25,404	100.00	87.72
19	22,300	100.00	96.03
20	22,907	100.00	100.00
21	31,945	141.44	336.63
22	21,804	113.50	113.50
23	21,900	132.00	122.80
24	21,823	128.97	135.56
25	22,061	256.89	307.72
26	22,779	271.27	284.72
27	38,148	100.00	100.00
28	27,965	112.40	105.49
29	34,913	106.30	92.01
30	25,000	100.00	100.00
31	25,000	100.00	100.00
32	25,000	100.00	100.00
33	25,000	100.00	100.00
34	25,000	100.00	100.00
35	25,000	100.00	100.00
36	25,331	296.00	196.00
37	25,000	100.00	100.00
38	25,716	280.00	180.00
39	25,000	128.52	128.52
40	39,399	177.57	134.90
41	29,285	136.00	286.87
42	32,211	285.00	285.87
43	34,920	285.00	285.87

LOT #	MIN LOT AREA (S.F.)	MIN LOT WIDTH	MIN LOT FRONTAGE
44	34,272	100.21	99.01
45	25,265	153.99	136.61
46	25,630	102.17	89.67
47	22,177	102.17	89.67
48	22,585	130.39	113.32
49	22,951	100.00	100.00
50	29,305	135.30	141.09
51	31,081	113.25	103.67
52	23,000	100.00	100.00
53	23,000	100.00	100.00
54	37,138	276.23	325.74
55	27,147	186.30	204.96
56	34,275	149.69	346.67
57	30,764	100.00	93.30
58	33,166	100.22	93.53
59	33,136	100.00	100.00
60	36,713	137.17	146.74
61	32,693	114.87	105.30
62	23,000	100.00	100.00
63	23,000	100.00	100.00
64	23,396	135.43	146.70
65	27,389	100.00	100.00
66	33,465	145.15	167.08
67	27,827	142.08	142.08
68	24,620	100.00	100.00
69	21,782	100.17	94.30
70	22,023	112.87	96.28
71	28,046	210.03	216.72
72	21,931	143.36	154.60
73	22,269	100.50	107.38
74	29,312	105.38	107.48
75	30,833	102.99	91.66
76	25,577	122.20	113.56
77	39,865	113.30	97.62
78	30,890	539.68	605.43
79	34,501	348.34	428.77
80	23,000	100.00	100.00
81	23,000	100.00	100.00
82	21,903	141.44	287.29
83	22,115	118.00	295.77
84	21,994	100.04	104.09
85	22,776	140.40	194.49
86	29,644	155.72	155.72
87	22,171	121.40	205.83
88	22,237	123.00	123.00
89	22,310	180.97	291.10
90	23,918	100.00	90.90
91	22,741	102.25	175.17
92	22,744	131.30	142.40
93	31,781	108.38	103.11
94	31,896	116.71	94.69
95	22,333	117.60	114.30
96	25,780	138.19	146.87
97	24,702	107.77	207.87
98	28,596	286.41	286.77
99	31,819	155.47	97.80
100	24,450	284.97	195.97
101	25,353	186.40	179.77

ORANGE COUNTY HEALTH DEPARTMENT APPROVAL

THIS PLAN REFLECTS FINAL STREET NAMES. FOR OTHER PLANS AND PROFILES, REFER TO THE FOLLOWING:

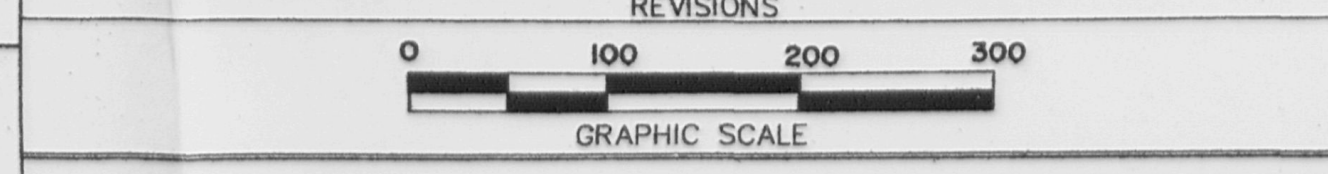
FINAL STREET NAME	PREVIOUSLY PROPOSED STREET NAME
ROLLING RIDGE	SHANNON DRIVE
FOREST GLEN	DEVONSHIRE DRIVE
SUMMIT WOODS	ROAD 'G'
VERDE VISTA	ROAD 'A'
PINE VIEW	ANNA LANE

PLANNING BOARD APPROVAL
James P. Poles, Jr. Chairman

- GENERAL NOTES:
- BEING KNOWN AS SECTION 65, BLOCK 1, LOTS 16, 2, 32, AND 35.22 AS SHOWN ON THE CURRENT TAX MAPS OF THE TOWN OF NEW WINDSOR, ORANGE COUNTY, NEW YORK.
 - PROPERTY OWNER AND APPLICANT:
HUDSON VALLEY DEVELOPMENT
9 SYLVAN WAY
PARSIPPANY, NJ 07054
 - TOTAL PARCEL AREA: 79.4 +/- ACRES.
 - NUMBER OF EXISTING LOTS: 3
NUMBER OF PROPOSED LOTS: 101
 - PROPERTY IS LOCATED IN R-3 SINGLE FAMILY RESIDENTIAL ZONE. ALL PROPOSED LOTS TO MEET OR EXCEED THE ZONING REQUIREMENTS. (SEE THIS DRAWING FOR BULK TABLE).
 - ALL PROPOSED ROAD AND UTILITY IMPROVEMENTS TO BE CONSTRUCTED IN ACCORDANCE WITH TOWN OF NEW WINDSOR SPECIFICATIONS. OPTIONAL BELGIAN BLOCK CURB AS PER TOWNSHIP OF NEW WINDSOR APPROVAL.
 - ALL STORM SEWER PIPES TO BE HIGH DENSITY POLYETHYLENE PIPE (HDPE).
 - PROPOSED RETAINING WALLS TO BE CONSTRUCTED OF MATERIALS AS APPROVED BY THE ENGINEER.
 - GAS, ELECTRIC, TELEPHONE AND CABLE TO BE INSTALLED UNDERGROUND BY EACH RESPECTIVE UTILITY COMPANY.
 - INSTALLATION OF THE STREET LIGHTS TO BE IN ACCORDANCE WITH THE TOWN OF NEW WINDSOR REQUIREMENTS AND TO BE COORDINATED WITH THE PUBLIC UTILITY COMPANY.
 - SHADE STREET TREES TO BE PROVIDED 50' O.C. AND SHALL HAVE A CALIPER OF NO LESS THAN 2 INCHES.
 - A ROAD MAINTENANCE AGREEMENT IS TO BE FILED IN THE TOWN CLERK'S OFFICE AND THE COUNTY CLERK'S OFFICE.
 - MAP REFERENCES:

- BOUNDARY/LOCATION SURVEY FOR JAMES HUSTED, DWIGHT TOWNSEND AND FRANK PURDY FOR CONVEYANCE TO: THE FIRST DEVELOPMENT GROUP OF NEW WINDSOR, TOWN OF NEW WINDSOR, ORANGE COUNTY, NEW YORK, PREPARED BY ELLIAS D. GREVAS, L.S., DATED 1/29/88, LAST REVISED 7/11/88.
- TOPOGRAPHY BASED UPON THE "PRELIMINARY SUBDIVISION PLAN FOR HUSTED, TOWNSEND AND PURDY, TOWN OF NEW WINDSOR, ORANGE COUNTY, NEW YORK," PREPARED BY GREVAS & HILDRETH LAND SURVEYORS, DATED 1/29/88, LAST REVISED 3/31/89.
- TOPOGRAPHIC AND UTILITY INFORMATION SUPPLEMENTED WITH "UTILITY INFORMATION FOR SHANNON ACRES", DRAWINGS 1, 2 & 3 OF 3 PREPARED BY STEVEN P. DRABIC, PROFESSIONAL LAND SURVEYOR, DATED SEPTEMBER 24, 1997.
- WETLANDS ON SITE DELINEATED AND FLAGGED BY ROBERT TORGENSEN, L.A., C.P.E.S.C., LANDSCAPE ARCHITECTURE AND ENVIRONMENTAL SCIENCES AND REFLECTED ON "SURVEY MAP OF WETLANDS AREAS ON SHANNON ACRES" PREPARED BY STEVEN P. DRABIC, PROFESSIONAL LAND SURVEYOR, DATED JUNE 16, 1997.

NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION
10	7/28/98	PHASE LINES ELIMINATED	11	8/1/98	REVISED AS PER ORDINANCE DATED 8/15/98
5	12/25/98	REVISED FOR SUBMISSION TO DEPT. OF HEALTH & HYDRO.	8	7/1/99	REVISED AS PER NYSDOC
2	5/20/99	MINOR DRAFTING REVISIONS & RE-RELATED LOT NUMBERS	7	2/6/99	REVISED AS PER NYSDOC
1	2/20/99	MINOR DRAFTING REVISIONS & RE-RELATED LOT NUMBERS	6	3/9/99	REVISED AS PER ORANGE COUNTY HEALTH DEPT. / NYSDOC WETLANDS VERIFICATION



OVERALL SUBDIVISION

SHANNON ACRES
TO BE KNOWN AS FOREST GLEN

NEW WINDSOR	ORANGE COUNTY	NEW YORK
Div. by V.L.D./Y.M.	Scale 1" = 100'	Date 10/17/97
Proj. No. 95011	Drawn by J.L.D.	Proj. No. 95011

ENTEC
Engineering and Technical Resources, Inc.
Consulting Engineers
535 High Mountain Road, North Haledon, N.J. 07508

ALEX J. ZEPPO, PROFESSIONAL ENGINEER, N.Y. LIC NO. 072852